

104TH CONGRESS
2D SESSION

S. 1685

To provide income and economic security to the American family, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 1996

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide income and economic security to the American family, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “American Family Income and Economic Security Act of
7 1996”.

8 (b) AMENDMENT OF 1986 CODE.—Except as other-
9 wise expressly provided, whenever in this Act an amend-
10 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Internal Revenue Code of 1986.

4 (c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—AMERICAN FAMILY ECONOMIC SECURITY

Subtitle A—Wage Security

Sec. 101. Increase in the minimum wage rate.

Subtitle B—Retirement Security

PART I—IRA DEDUCTION

Sec. 111. Increase in income limitations.

Sec. 112. Inflation adjustment for deductible amount and income limitations.

Sec. 113. Coordination of IRA deduction limit with elective deferral limit.

PART II—NONDEDUCTIBLE TAX-FREE IRAS

Sec. 116. Establishment of nondeductible tax-free individual retirement accounts.

PART III—PENALTY-FREE DISTRIBUTIONS

Sec. 121. Distributions from certain plans may be used without penalty to purchase first homes, to pay higher education or financially devastating medical expenses, or by the unemployed.

Sec. 122. Contributions must be held at least 5 years in certain cases.

PART IV—PLAN LOANS

Sec. 126. Loan requirements for defined contribution plans.

Subtitle C—Health Security

PART I—DEFINITIONS

Sec. 131. Definitions.

PART II—HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY

SUBPART A—GROUP MARKET RULES

Sec. 135. Guaranteed availability of health coverage.

Sec. 136. Guaranteed renewability of health coverage.

Sec. 137. Portability of health coverage and limitation on preexisting condition exclusions.

Sec. 138. Special enrollment periods.

Sec. 139. Disclosure of information.

SUBPART B—INDIVIDUAL MARKET RULES

- Sec. 141. Individual health plan portability.
- Sec. 142. Guaranteed renewability of individual health coverage.
- Sec. 143. State flexibility in individual market reforms.
- Sec. 144. Definition.

SUBPART C—COBRA CLARIFICATIONS

- Sec. 151. COBRA clarifications.

SUBPART D—PRIVATE HEALTH PLAN PURCHASING COOPERATIVES

- Sec. 161. Private health plan purchasing cooperatives.

PART II—APPLICATION AND ENFORCEMENT OF STANDARDS

- Sec. 171. Applicability.
- Sec. 172. Enforcement of standards.

PART III—MISCELLANEOUS PROVISIONS

- Sec. 181. HMOs allowed to offer plans with deductibles to individuals with medical savings accounts.
- Sec. 182. Health coverage availability study.
- Sec. 183. Sense of the committee concerning medicare.
- Sec. 184. Effective date.
- Sec. 185. Severability.

Subtitle D—Employee Security

- Sec. 191. Allowance of credit for employer expenses for certain on-site day-care facilities.
- Sec. 192. Exclusion for group legal services made permanent.
- Sec. 193. One-time exclusion of gain from sale of principal residence if individual or spouse is terminally ill.

TITLE II—INCENTIVES FOR LIFELONG LEARNING

- Sec. 201. Credit for employee training.
- Sec. 202. Permanent extension of educational assistance exclusion.
- Sec. 203. Deduction for higher education expenses.

TITLE III—HIGH-WAGE JOBS FOR AMERICAN FAMILIES

Subtitle A—Business Incentives

- Sec. 301. Exclusion for gain from small business stock.
- Sec. 302. Permanent extension of research credit.

Subtitle B—Preservation of American Jobs

- Sec. 311. Taxation of income of controlled foreign corporations attributable to imported property.
- Sec. 312. Debarment of Federal contractors not in compliance with Immigration and Nationality Act employment provisions.
- Sec. 313. Sense of Congress relating to stock options for employees who are laid off.

Subtitle C—Promotion of Long-Term Investments in American Businesses

PART I—LONG-TERM INVESTMENT, COMPETITIVENESS, PENSION
PROTECTION, AND CORPORATE TAKEOVER REFORM

- Sec. 321. Findings.
- Sec. 322. Long-term investments and pension protection.
- Sec. 323. Protection of workers.
- Sec. 324. Williams Act reforms.
- Sec. 325. Anti-greenmail/short-swing profits.
- Sec. 326. Additional reserve requirements.
- Sec. 327. Leveraged buyout and going private transactions.
- Sec. 328. Firm financing and financing disclosures.
- Sec. 329. Role of State law.

PART II—RESTRICTIONS ON HARMFUL TAKEOVERS

- Sec. 331. Disallowance of deduction for merger and acquisition expenses.

PART III—OTHER PROVISIONS

- Sec. 341. \$1,000,000 compensation deduction limit extended to all employers of all corporations.
- Sec. 342. Level of participation in guaranteed loans under export working capital program.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Deduction for local sewer and water fees.

1 **TITLE I—AMERICAN FAMILY**
2 **ECONOMIC SECURITY**
3 **Subtitle A—Wage Security**

4 **SEC. 101. INCREASE IN THE MINIMUM WAGE RATE.**

5 Section 6(a)(1) of the Fair Labor Standards Act of
6 1938 (29 U.S.C. 206(a)(1)) is amended to read as follows:

7 “(1) except as otherwise provided in this sec-
8 tion, not less than \$4.25 an hour during the period
9 ending July 3, 1995, not less than \$4.70 an hour
10 during the year beginning July 4, 1995, and not less
11 than \$5.15 an hour after July 3, 1996;”.

Subtitle B—Retirement Security

PART I—IRA DEDUCTION

SEC. 111. INCREASE IN INCOME LIMITATIONS.

(a) IN GENERAL.—Subparagraph (B) of section 219(g)(3) is amended—

(1) by striking “\$40,000” in clause (i) and inserting “\$80,000”, and

(2) by striking “\$25,000” in clause (ii) and inserting “\$50,000”.

(b) PHASE-OUT OF LIMITATIONS.—Clause (ii) of section 219(g)(2)(A) is amended by striking “\$10,000” and inserting “an amount equal to 10 times the dollar amount applicable for the taxable year under subsection (b)(1)(A)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

SEC. 112. INFLATION ADJUSTMENT FOR DEDUCTIBLE AMOUNT AND INCOME LIMITATIONS.

(a) IN GENERAL.—Section 219 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) COST-OF-LIVING ADJUSTMENTS.—

“(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1996, each

1 dollar amount to which this subsection applies shall
 2 be increased by an amount equal to—

3 “(A) such dollar amount, multiplied by

4 “(B) the cost-of-living adjustment deter-
 5 mined under section 1(f)(3) for the calendar
 6 year in which the taxable year begins, deter-
 7 mined by substituting ‘calendar year 1995’ for
 8 ‘calendar year 1992’ in subparagraph (B)
 9 thereof.

10 “(2) DOLLAR AMOUNTS TO WHICH SUBSECTION
 11 APPLIES.—This subsection shall apply to—

12 “(A) the \$2,000 amounts under subsection
 13 (b)(1)(A) and (c), and

14 “(B) the applicable dollar amounts under
 15 subsection (g)(3)(B).

16 “(3) ROUNDING RULES.—

17 “(A) DEDUCTION AMOUNTS.—If any
 18 amount referred to in paragraph (2)(A) as ad-
 19 justed under paragraph (1) is not a multiple of
 20 \$500, such amount shall be rounded to the next
 21 lowest multiple of \$500.

22 “(B) APPLICABLE DOLLAR AMOUNTS.—If
 23 any amount referred to in paragraph (2)(B) as
 24 adjusted under paragraph (1) is not a multiple

1 of \$5,000, such amount shall be rounded to the
2 next lowest multiple of \$5,000.”

3 (b) CONFORMING AMENDMENTS.—

4 (1) Clause (i) of section 219(c)(2)(A) is amend-
5 ed to read as follows:

6 “(i) the sum of \$250 and the dollar
7 amount in effect for the taxable year under
8 subsection (b)(1)(A), or”.

9 (2) Section 408(a)(1) is amended by striking
10 “in excess of \$2,000 on behalf of any individual”
11 and inserting “on behalf of any individual in excess
12 of the amount in effect for such taxable year under
13 section 219(b)(1)(A)”.

14 (3) Section 408(b)(2)(B) is amended by strik-
15 ing “\$2,000” and inserting “the dollar amount in
16 effect under section 219(b)(1)(A)”.

17 (4) Subparagraph (A) of section 408(d)(5) is
18 amended by striking “\$2,250” and inserting “the
19 dollar amount in effect for the taxable year under
20 section 219(c)(2)(A)(i)”.

21 (5) Section 408(j) is amended by striking
22 “\$2,000”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 1995.

1 **SEC. 113. COORDINATION OF IRA DEDUCTION LIMIT WITH**
 2 **ELECTIVE DEFERRAL LIMIT.**

3 (a) IN GENERAL.—Section 219(b) (relating to maxi-
 4 mum amount of deduction) is amended by adding at the
 5 end the following new paragraph:

6 “(4) COORDINATION WITH ELECTIVE DEFER-
 7 RAL LIMIT.—The amount determined under para-
 8 graph (1) or subsection (c)(2) with respect to any
 9 individual for any taxable year shall not exceed the
 10 excess (if any) of—

11 “(A) the limitation applicable for the tax-
 12 able year under section 402(g)(1), over

13 “(B) the elective deferrals (as defined in
 14 section 402(g)(3)) of such individual for such
 15 taxable year.”

16 (b) CONFORMING AMENDMENT.—Section 219(c) is
 17 amended by adding at the end the following new para-
 18 graph:

19 “(3) CROSS REFERENCE.—

“For reduction in paragraph (2) amount, see sub-
 section (b)(4).”

20 (c) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to taxable years beginning after
 22 December 31, 1995.

1 **PART II—NONDEDUCTIBLE TAX-FREE IRAs**

2 **SEC. 116. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE**
 3 **INDIVIDUAL RETIREMENT ACCOUNTS.**

4 (a) IN GENERAL.—Subpart A of part I of subchapter
 5 D of chapter 1 (relating to pension, profit-sharing, stock
 6 bonus plans, etc.) is amended by inserting after section
 7 408 the following new section:

8 **“SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.**

9 “(a) GENERAL RULE.—Except as provided in this
 10 chapter, a special individual retirement account shall be
 11 treated for purposes of this title in the same manner as
 12 an individual retirement plan.

13 “(b) SPECIAL INDIVIDUAL RETIREMENT AC-
 14 COUNT.—For purposes of this title, the term ‘special indi-
 15 vidual retirement account’ means an individual retirement
 16 plan which is designated at the time of establishment of
 17 the plan as a special individual retirement account.

18 “(c) TREATMENT OF CONTRIBUTIONS.—

19 “(1) NO DEDUCTION ALLOWED.—No deduction
 20 shall be allowed under section 219 for a contribution
 21 to a special individual retirement account.

22 “(2) CONTRIBUTION LIMIT.—The aggregate
 23 amount of contributions for any taxable year to all
 24 special individual retirement accounts maintained for
 25 the benefit of an individual shall not exceed the ex-
 26 cess (if any) of—

1 “(A) the maximum amount allowable as a
 2 deduction under section 219 with respect to
 3 such individual for such taxable year, over

4 “(B) the amount so allowed.

5 “(3) SPECIAL RULES FOR QUALIFIED TRANS-
 6 FERS.—

7 “(A) IN GENERAL.—No rollover contribu-
 8 tion may be made to a special individual retire-
 9 ment account unless it is a qualified transfer.

10 “(B) LIMIT NOT TO APPLY.—The limita-
 11 tion under paragraph (2) shall not apply to a
 12 qualified transfer to a special individual retire-
 13 ment account.

14 “(d) TAX TREATMENT OF DISTRIBUTIONS.—

15 “(1) IN GENERAL.—Except as provided in this
 16 subsection, any amount paid or distributed out of a
 17 special individual retirement account shall not be in-
 18 cluded in the gross income of the distributee.

19 “(2) EXCEPTION FOR EARNINGS ON CONTRIBU-
 20 TIONS HELD LESS THAN 5 YEARS.—

21 “(A) IN GENERAL.—Any amount distrib-
 22 uted out of a special individual retirement ac-
 23 count which consists of earnings allocable to
 24 contributions made to the account during the 5-
 25 year period ending on the day before such dis-

1 tribution shall be included in the gross income
2 of the distributee for the taxable year in which
3 the distribution occurs.

4 “(B) ORDERING RULE.—

5 “(i) FIRST-IN, FIRST-OUT RULE.—
6 Distributions from a special individual re-
7 tirement account shall be treated as having
8 been made—

9 “(I) first from the earliest con-
10 tribution (and earnings allocable
11 thereto) remaining in the account at
12 the time of the distribution, and

13 “(II) then from other contribu-
14 tions (and earnings allocable thereto)
15 in the order in which made.

16 “(ii) ALLOCATIONS BETWEEN CON-
17 TRIBUTIONS AND EARNINGS.—Any portion
18 of a distribution allocated to a contribution
19 (and earnings allocable thereto) shall be
20 treated as allocated first to the earnings
21 and then to the contribution.

22 “(iii) ALLOCATION OF EARNINGS.—
23 Earnings shall be allocated to a contribu-
24 tion in such manner as the Secretary may
25 by regulations prescribe.

1 “(iv) CONTRIBUTIONS IN SAME
 2 YEAR.—Except as provided in regulations,
 3 all contributions made during the same
 4 taxable year may be treated as 1 contribu-
 5 tion for purposes of this subparagraph.

6 “(C) CROSS REFERENCE.—

**“For additional tax for early withdrawal, see sec-
 tion 72(t).**

7 “(3) QUALIFIED TRANSFER.—

8 “(A) IN GENERAL.—Paragraph (2) shall
 9 not apply to any distribution which is trans-
 10 ferred in a qualified transfer to another special
 11 individual retirement account.

12 “(B) CONTRIBUTION PERIOD.—For pur-
 13 poses of paragraph (2), the special individual
 14 retirement account to which any contributions
 15 are transferred shall be treated as having held
 16 such contributions during any period such con-
 17 tributions were held (or are treated as held
 18 under this subparagraph) by the special individ-
 19 ual retirement account from which transferred.

20 “(4) SPECIAL RULES RELATING TO CERTAIN
 21 TRANSFERS.—

22 “(A) IN GENERAL.—Notwithstanding any
 23 other provision of law, in the case of a qualified
 24 transfer to a special individual retirement ac-

1 count from an individual retirement plan which
 2 is not a special individual retirement account—

3 “(i) there shall be included in gross
 4 income any amount which, but for the
 5 qualified transfer, would be includible in
 6 gross income, but

7 “(ii) section 72(t) shall not apply to
 8 such amount.

9 “(B) TIME FOR INCLUSION.—In the case
 10 of any qualified transfer which occurs before
 11 January 1, 1997, any amount includible in
 12 gross income under subparagraph (A) with re-
 13 spect to such contribution shall be includible
 14 ratably over the 4-taxable year period beginning
 15 in the taxable year in which the amount was
 16 paid or distributed out of the individual retire-
 17 ment plan.

18 “(e) QUALIFIED TRANSFER.—

19 “(1) IN GENERAL.—The term ‘qualified trans-
 20 fer’ means a transfer to a special individual retire-
 21 ment account from another such account or from an
 22 individual retirement plan but only if such transfer
 23 meets the requirements of section 408(d)(3).

24 “(2) LIMITATION.—A transfer otherwise de-
 25 scribed in paragraph (1) shall not be treated as a

1 qualified transfer if the taxpayer's adjusted gross in-
 2 come for the taxable year of the transfer exceeds the
 3 sum of—

4 “(A) the applicable dollar amount, plus

5 “(B) the dollar amount applicable for the
 6 taxable year under section 219(g)(2)(A)(ii).

7 This paragraph shall not apply to a transfer from a
 8 special individual retirement account to another spe-
 9 cial individual retirement account.

10 “(3) DEFINITIONS.—For purposes of this sub-
 11 section, the terms ‘adjusted gross income’ and ‘ap-
 12 plicable dollar amount’ have the meanings given
 13 such terms by section 219(g)(3), except subpara-
 14 graph (A)(ii) thereof shall be applied without regard
 15 to the phrase ‘or the deduction allowable under this
 16 section’.”

17 (b) EARLY WITHDRAWAL PENALTY.—Section 72(t)
 18 is amended by adding at the end the following new para-
 19 graph:

20 “(6) RULES RELATING TO SPECIAL INDIVIDUAL
 21 RETIREMENT ACCOUNTS.—In the case of a special
 22 individual retirement account under section 408A—

23 “(A) this subsection shall only apply to
 24 distributions out of such account which consist
 25 of earnings allocable to contributions made to

1 the account during the 5-year period ending on
 2 the day before such distribution, and

3 “(B) paragraph (2)(A)(i) shall not apply to
 4 any distribution described in subparagraph
 5 (A).”

6 (c) EXCESS CONTRIBUTIONS.—Section 4973(b) is
 7 amended by adding at the end the following new sentence:
 8 “For purposes of paragraphs (1)(B) and (2)(C), the
 9 amount allowable as a deduction under section 219 shall
 10 be computed without regard to section 408A.”

11 (d) CONFORMING AMENDMENT.—The table of sec-
 12 tions for subpart A of part I of subchapter D of chapter
 13 1 is amended by inserting after the item relating to section
 14 408 the following new item:

“Sec. 408A. Special individual retirement accounts.”

15 (e) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to taxable years beginning after
 17 December 31, 1995.

18 **PART III—PENALTY-FREE DISTRIBUTIONS**

19 **SEC. 121. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE**
 20 **USED WITHOUT PENALTY TO PURCHASE**
 21 **FIRST HOMES, TO PAY HIGHER EDUCATION**
 22 **OR FINANCIALLY DEVASTATING MEDICAL EX-**
 23 **PENSES, OR BY THE UNEMPLOYED.**

24 (a) IN GENERAL.—Paragraph (2) of section 72(t)
 25 (relating to exceptions to 10-percent additional tax on

1 early distributions from qualified retirement plans) is
 2 amended by adding at the end the following new subpara-
 3 graph:

4 “(D) DISTRIBUTIONS FROM CERTAIN
 5 PLANS FOR FIRST HOME PURCHASES OR EDU-
 6 CATIONAL EXPENSES.—Distributions to an in-
 7 dividual from an individual retirement plan—

8 “(i) which are qualified first-time
 9 homebuyer distributions (as defined in
 10 paragraph (7)); or

11 “(ii) to the extent such distributions
 12 do not exceed the qualified higher edu-
 13 cation expenses (as defined in paragraph
 14 (8)) of the taxpayer for the taxable year.”

15 (b) FINANCIALLY DEVASTATING MEDICAL EX-
 16 PENSES.—

17 (1) IN GENERAL.—Section 72(t)(3)(A) is
 18 amended by striking “(B),”.

19 (2) CERTAIN LINEAL DESCENDANTS AND AN-
 20 CESTORS TREATED AS DEPENDENTS AND LONG-
 21 TERM CARE SERVICES TREATED AS MEDICAL
 22 CARE.—Subparagraph (B) of section 72(t)(2) is
 23 amended by striking “medical care” and all that fol-
 24 lows and inserting “medical care determined—

1 “(i) without regard to whether the
2 employee itemizes deductions for such tax-
3 able year, and

4 “(ii) in the case of an individual re-
5 tirement plan—

6 “(I) by treating such employee’s
7 dependents as including all children,
8 grandchildren and ancestors of the
9 employee or such employee’s spouse
10 and

11 “(II) by treating qualified long-
12 term care services (as defined in para-
13 graph (9)) as medical care for pur-
14 poses of this subparagraph (B).”

15 (3) CONFORMING AMENDMENT.—Subparagraph
16 (B) of section 72(t)(2) is amended by striking “or
17 (C)” and inserting “, (C) or (D)”.

18 (c) DEFINITIONS.—Section 72(t), as amended by this
19 Act, is amended by adding at the end the following new
20 paragraphs:

21 “(7) QUALIFIED FIRST-TIME HOMEBUYER DIS-
22 TRIBUTIONS.—For purposes of paragraph (2)(D)(i):

23 “(A) IN GENERAL.—The term ‘qualified
24 first-time homebuyer distribution’ means any
25 payment or distribution received by an individ-

ual to the extent such payment or distribution is used by the individual before the close of the 60th day after the day on which such payment or distribution is received to pay qualified acquisition costs with respect to a principal residence of a first-time homebuyer who is such individual or the spouse, child (as defined in section 151(c)(3)), or grandchild of such individual.

“(B) QUALIFIED ACQUISITION COSTS.—

For purposes of this paragraph, the term ‘qualified acquisition costs’ means the costs of acquiring, constructing, or reconstructing a residence. Such term includes any usual or reasonable settlement, financing, or other closing costs.

“(C) FIRST-TIME HOMEBUYER; OTHER

DEFINITIONS.—For purposes of this paragraph:

“(i) FIRST-TIME HOMEBUYER.—The

term ‘first-time homebuyer’ means any individual if—

“(I) such individual (and if married,

such individual’s spouse) had no present ownership interest in a principal residence during the 3-year pe-

riod ending on the date of acquisition
of the principal residence to which
this paragraph applies, and

“(II) subsection (h) or (k) of section 1034 did not suspend the running of any period of time specified in section 1034 with respect to such individual on the day before the date the distribution is applied pursuant to subparagraph (A).

In the case of an individual described in section 143(i)(1)(C) for any year, an ownership interest shall not include any interest under a contract of deed described in such section. An individual who loses an ownership interest in a principal residence incident to a divorce or legal separation is deemed for purposes of this subparagraph to have had no ownership interest in such principal residence within the period referred to in subparagraph (A)(II).

“(ii) **PRINCIPAL RESIDENCE.**—The term ‘principal residence’ has the same meaning as when used in section 1034.

1 “(iii) DATE OF ACQUISITION.—The
2 term ‘date of acquisition’ means the date—

3 “(I) on which a binding contract
4 to acquire the principal residence to
5 which subparagraph (A) applies is en-
6 tered into, or

7 “(II) on which construction or re-
8 construction of such a principal resi-
9 dence is commenced.

10 “(D) SPECIAL RULE WHERE DELAY IN AC-
11 QUISSION.—If any distribution from any indi-
12 vidual retirement plan fails to meet the require-
13 ments of subparagraph (A) solely by reason of
14 a delay or cancellation of the purchase or con-
15 struction of the residence, the amount of the
16 distribution may be contributed to an individual
17 retirement plan as provided in section
18 408(d)(3)(A)(i) (determined by substituting
19 ‘120 days’ for ‘60 days’ in such section), except
20 that—

21 “(i) section 408(d)(3)(B) shall not be
22 applied to such contribution, and

23 “(ii) such amount shall not be taken
24 into account in determining whether sec-

1 tion 408(d)(3)(A)(i) applies to any other
2 amount.

3 “(8) QUALIFIED HIGHER EDUCATION EX-
4 PENSES.—For purposes of paragraph (2)(D)(ii)—

5 “(A) IN GENERAL.—The term ‘qualified
6 higher education expenses’ means tuition and
7 fees required for the enrollment or attendance
8 of—

9 “(i) the taxpayer,

10 “(ii) the taxpayer’s spouse,

11 “(iii) a dependent of the taxpayer
12 with respect to whom the taxpayer is al-
13 lowed a deduction under section 151, or

14 “(iv) the taxpayer’s child (as defined
15 in section 151(c)(3)) or grandchild,
16 as an eligible student at an institution of higher
17 education (as defined in paragraphs (1)(D) and
18 (2) of section 220(c)).

19 “(B) EXCEPTIONS.—The term ‘qualified
20 higher education expenses’ does not include ex-
21 penses described in subparagraphs (B) and (C)
22 of section 220(c)(1).

23 “(C) COORDINATION WITH SAVINGS BOND
24 PROVISIONS.—The amount of qualified higher
25 education expenses for any taxable year shall be

1 reduced by any amount excludable from gross
 2 income under section 135.

3 “(9) QUALIFIED LONG-TERM CARE SERVICES.—

4 For purposes of paragraph (2)(B):

5 “(A) IN GENERAL.—The term ‘qualified
 6 long-term care services’ means necessary diag-
 7 nostic, curing, mitigating, treating, preventive,
 8 therapeutic, and rehabilitative services, and
 9 maintenance and personal care services (wheth-
 10 er performed in a residential or nonresidential
 11 setting) which—

12 “(i) are required by an individual dur-
 13 ing any period the individual is an inca-
 14 pacitated individual (as defined in subpara-
 15 graph (B)),

16 “(ii) have as their primary purpose—

17 “(I) the provision of needed as-
 18 sistance with 1 or more activities of
 19 daily living (as defined in subpara-
 20 graph (C)), or

21 “(II) protection from threats to
 22 health and safety due to severe cog-
 23 nitive impairment, and

24 “(iii) are provided pursuant to a con-
 25 tinuing plan of care prescribed by a li-

1 censed professional (as defined in subpara-
 2 graph (D)).

3 “(B) INCAPACITATED INDIVIDUAL.—The
 4 term ‘incapacitated individual’ means any indi-
 5 vidual who—

6 “(i) is unable to perform, without sub-
 7 stantial assistance from another individual
 8 (including assistance involving cueing or
 9 substantial supervision), at least 2 activi-
 10 ties of daily living as defined in subpara-
 11 graph (C), or

12 “(ii) has severe cognitive impairment
 13 as defined by the Secretary in consultation
 14 with the Secretary of Health and Human
 15 Services.

16 Such term shall not include any individual oth-
 17 erwise meeting the requirements of the preced-
 18 ing sentence unless a licensed professional with-
 19 in the preceding 12-month period has certified
 20 that such individual meets such requirements.

21 “(C) ACTIVITIES OF DAILY LIVING.—Each
 22 of the following is an activity of daily living:

23 “(i) Eating.

24 “(ii) Toileting.

25 “(iii) Transferring.

1 “(iv) Bathing.

2 “(v) Dressing.

3 “(D) LICENSED PROFESSIONAL.—The
4 term ‘licensed professional’ means—

5 “(i) a physician or registered profes-
6 sional nurse, or

7 “(ii) any other individual who meets
8 such requirements as may be prescribed by
9 the Secretary after consultation with the
10 Secretary of Health and Human Services.

11 “(E) CERTAIN SERVICES NOT IN-
12 CLUDED.—The term ‘qualified long-term care
13 services’ shall not include any services provided
14 to an individual—

15 “(i) by a relative (directly or through
16 a partnership, corporation, or other entity)
17 unless the relative is a licensed professional
18 with respect to such services, or

19 “(ii) by a corporation or partnership
20 which is related (within the meaning of
21 section 267(b) or 707(b)) to the individual.

22 For purposes of this subparagraph, the term
23 ‘relative’ means an individual bearing a rela-
24 tionship to the individual which is described in
25 paragraphs (1) through (8) of section 152(a).”

1 (d) PENALTY-FREE DISTRIBUTIONS FOR CERTAIN
 2 UNEMPLOYED INDIVIDUALS.—Paragraph (2) of section
 3 72(t) is amended by adding at the end the following new
 4 subparagraph:

5 “(E) DISTRIBUTIONS TO UNEMPLOYED IN-
 6 DIVIDUALS.—A distribution from an individual
 7 retirement plan to an individual after separa-
 8 tion from employment, if—

9 “(i) such individual has received un-
 10 employment compensation for 12 consecu-
 11 tive weeks under any Federal or State un-
 12 employment compensation law by reason of
 13 such separation, and

14 “(ii) such distributions are made dur-
 15 ing any taxable year during which such un-
 16 employment compensation is paid or the
 17 succeeding taxable year.”

18 (e) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to payments and distributions after
 20 December 31, 1995.

21 **SEC. 122. CONTRIBUTIONS MUST BE HELD AT LEAST 5**
 22 **YEARS IN CERTAIN CASES.**

23 (a) IN GENERAL.—Section 72(t), as amended by this
 24 Act, is amended by adding at the end the following new
 25 paragraph:

1 “(10) CERTAIN CONTRIBUTIONS MUST BE HELD
2 5 YEARS.—

3 “(A) IN GENERAL.—Paragraph (2)(A)(i)
4 shall not apply to any amount distributed out
5 of an individual retirement plan (other than a
6 special individual retirement account) which is
7 allocable to contributions made to the plan dur-
8 ing the 5-year period ending on the date of
9 such distribution (and earnings on such con-
10 tributions).

11 “(B) ORDERING RULE.—For purposes of
12 this paragraph, distributions shall be treated as
13 having been made—

14 “(i) first from the earliest contribu-
15 tion (and earnings allocable thereto) re-
16 maining in the account at the time of the
17 distribution, and

18 “(ii) then from other contributions
19 (and earnings allocable thereto) in the
20 order in which made.

21 Earnings shall be allocated to contributions in
22 such manner as the Secretary may prescribe.

23 “(C) SPECIAL RULE FOR ROLLOVERS.—

24 “(i) PENSION PLANS.—Subparagraph
25 (A) shall not apply to distributions out of

an individual retirement plan which are allocable to rollover contributions to which section 402(c), 403(a)(4), or 403(b)(8) applied.

“(ii) CONTRIBUTION PERIOD.—For purposes of subparagraph (A), amounts shall be treated as having been held by a plan during any period such contributions were held (or are treated as held under this clause) by any individual retirement plan from which transferred.

“(D) SPECIAL ACCOUNTS.—For rules applicable to special individual retirement accounts under section 408A, see paragraph (8).”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions (and earnings allocable thereto) which are made after December 31, 1995.

PART IV—PLAN LOANS

SEC. 126. LOAN REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS.

(a) IN GENERAL.—Section 401(a) is amended by inserting after paragraph (34) the following new paragraph:

“(35) LOAN REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS.—A trust which is part of a defined contribution plan shall not constitute a

1 qualified trust under this section unless the plan
 2 provides that a participant may, subject to the provi-
 3 sions of section 72(p), obtain a loan from the plan
 4 for the purpose of—

5 “(A) purchasing a principal residence,

6 “(B) paying qualified higher education ex-
 7 penses (as defined in section 72(t)(8)),

8 “(C) paying for medical expenses described
 9 in section 72(t)(2)(B), or

10 “(D) alleviating financial hardship.

11 In no event shall a plan be required to make a loan
 12 to a participant under this paragraph in an amount
 13 in excess of the nonforfeitable balance to the credit
 14 of the participant under the plan.”

15 (b) EFFECTIVE DATE.—The amendment made by
 16 this section shall apply to years beginning after December
 17 31, 1996, except that any plan amendment by reason of
 18 such amendment shall not required to be made before Jan-
 19 uary 1, 1998, if the plan is operated in accordance with
 20 such amendment for years beginning in 1997.

21 **Subtitle C—Health Security**

22 **PART I—DEFINITIONS**

23 **SEC. 131. DEFINITIONS.**

24 As used in this subtitle:

1 (1) BENEFICIARY.—The term “beneficiary” has
 2 the meaning given such term under section 3(8) of
 3 the Employee Retirement Income Security Act of
 4 1974 (29 U.S.C. 1002(8)).

5 (2) EMPLOYEE.—The term “employee” has the
 6 meaning given such term under section 3(6) of the
 7 Employee Retirement Income Security Act of 1974
 8 (29 U.S.C. 1002(6)).

9 (3) EMPLOYER.—The term “employer” has the
 10 meaning given such term under section 3(5) of the
 11 Employee Retirement Income Security Act of 1974
 12 (29 U.S.C. 1002(5)), except that such term shall in-
 13 clude only employers of two or more employees.

14 (4) EMPLOYEE HEALTH BENEFIT PLAN.—

15 (A) IN GENERAL.—The term “employee
 16 health benefit plan” means any employee wel-
 17 fare benefit plan, governmental plan, or church
 18 plan (as defined under paragraphs (1), (32),
 19 and (33) of section 3 of the Employee Retire-
 20 ment Income Security Act of 1974 (29 U.S.C.
 21 1002 (1), (32), and (33))) that provides or pays
 22 for health benefits (such as provider and hos-
 23 pital benefits) for participants and beneficiaries
 24 whether—

25 (i) directly;

(ii) through a group health plan offered by a health plan issuer as defined in paragraph (8); or

(iii) otherwise.

(B) RULE OF CONSTRUCTION.—An employee health benefit plan shall not be construed to be a group health plan, an individual health plan, or a health plan issuer.

(C) ARRANGEMENTS NOT INCLUDED.—Such term does not include the following, or any combination thereof:

(i) Coverage only for accident, or disability income insurance, or any combination thereof.

(ii) Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act).

(iii) Coverage issued as a supplement to liability insurance.

(iv) Liability insurance, including general liability insurance and automobile liability insurance.

(v) Workers compensation or similar insurance.

1 (vi) Automobile medical payment in-
2 surance.

3 (vii) Coverage for a specified disease
4 or illness.

5 (viii) Hospital or fixed indemnity in-
6 surance.

7 (ix) Short-term limited duration in-
8 surance.

9 (x) Credit-only, dental-only, or vision-
10 only insurance.

11 (xi) A health insurance policy provid-
12 ing benefits only for long-term care, nurs-
13 ing home care, home health care, commu-
14 nity-based care, or any combination there-
15 of.

16 (5) FAMILY.—

17 (A) IN GENERAL.—The term “family”
18 means an individual, the individual’s spouse,
19 and the child of the individual (if any).

20 (B) CHILD.—For purposes of subpara-
21 graph (A), the term “child” means any individ-
22 ual who is a child within the meaning of section
23 151(c)(3) of the Internal Revenue Code of
24 1986.

25 (6) GROUP HEALTH PLAN.—

1 (A) IN GENERAL.—The term “group
2 health plan” means any contract, policy, certifi-
3 cate or other arrangement offered by a health
4 plan issuer to a group purchaser that provides
5 or pays for health benefits (such as provider
6 and hospital benefits) in connection with an em-
7 ployee health benefit plan.

8 (B) ARRANGEMENTS NOT INCLUDED.—
9 Such term does not include the following, or
10 any combination thereof:

11 (i) Coverage only for accident, or dis-
12 ability income insurance, or any combina-
13 tion thereof.

14 (ii) Medicare supplemental health in-
15 surance (as defined under section
16 1882(g)(1) of the Social Security Act).

17 (iii) Coverage issued as a supplement
18 to liability insurance.

19 (iv) Liability insurance, including gen-
20 eral liability insurance and automobile li-
21 ability insurance.

22 (v) Workers compensation or similar
23 insurance.

24 (vi) Automobile medical payment in-
25 surance.

1 (vii) Coverage for a specified disease
2 or illness.

3 (viii) Hospital or fixed indemnity in-
4 surance.

5 (ix) Short-term limited duration in-
6 surance.

7 (x) Credit-only, dental-only, or vision-
8 only insurance.

9 (xi) A health insurance policy provid-
10 ing benefits only for long-term care, nurs-
11 ing home care, home health care, commu-
12 nity-based care, or any combination there-
13 of.

14 (7) GROUP PURCHASER.—The term “group
15 purchaser” means any person (as defined under
16 paragraph (9) of section 3 of the Employee Retirement
17 Income Security Act of 1974 (29 U.S.C.
18 1002(9)) or entity that purchases or pays for health
19 benefits (such as provider or hospital benefits) on
20 behalf of two or more participants or beneficiaries in
21 connection with an employee health benefit plan. A
22 health plan purchasing cooperative established under
23 section 131 shall not be considered to be a group
24 purchaser.

1 (8) HEALTH PLAN ISSUER.—The term “health
2 plan issuer” means any entity that is licensed (prior
3 to or after the date of enactment of this Act) by a
4 State to offer a group health plan or an individual
5 health plan.

6 (9) PARTICIPANT.—The term “participant” has
7 the meaning given such term under section 3(7) of
8 the Employee Retirement Income Security Act of
9 1974 (29 U.S.C. 1002(7)).

10 (10) PLAN SPONSOR.—The term “plan spon-
11 sor” has the meaning given such term under section
12 3(16)(B) of the Employee Retirement Income Secu-
13 rity Act of 1974 (29 U.S.C. 1002(16)(B)).

14 (11) SECRETARY.—The term “Secretary”, un-
15 less specifically provided otherwise, means the Sec-
16 retary of Labor.

17 (12) STATE.—The term “State” means each of
18 the several States, the District of Columbia, Puerto
19 Rico, the United States Virgin Islands, Guam,
20 American Samoa, and the Commonwealth of the
21 Northern Mariana Islands.

1 **PART II—HEALTH CARE ACCESS, PORTABILITY,**
2 **AND RENEWABILITY**

3 **Subpart A—Group Market Rules**

4 **SEC. 135. GUARANTEED AVAILABILITY OF HEALTH COV-**
5 **ERAGE.**

6 (a) IN GENERAL.—

7 (1) NONDISCRIMINATION.—Except as provided
8 in subsection (b), sections 136 and 137—

9 (A) a health plan issuer offering a group
10 health plan may not decline to offer whole
11 group coverage to a group purchaser desiring to
12 purchase such coverage; and

13 (B) an employee health benefit plan or a
14 health plan issuer offering a group health plan
15 may establish eligibility, continuation of eligi-
16 bility, enrollment, or premium contribution re-
17 quirements under the terms of such plan, ex-
18 cept that such requirements shall not be based
19 on health status, medical condition, claims ex-
20 perience, receipt of health care, medical history,
21 evidence of insurability, or disability.

22 (2) HEALTH PROMOTION AND DISEASE PRE-
23 VENTION.—Nothing in this subsection shall prevent
24 an employee health benefit plan or a health plan is-
25 suer from establishing premium discounts or modify-
26 ing otherwise applicable copayments or deductibles

1 in return for adherence to programs of health pro-
2 motion and disease prevention.

3 (b) APPLICATION OF CAPACITY LIMITS.—

4 (1) IN GENERAL.—Subject to paragraph (2), a
5 health plan issuer offering a group health plan may
6 cease offering coverage to group purchasers under
7 the plan if—

8 (A) the health plan issuer ceases to offer
9 coverage to any additional group purchasers;
10 and

11 (B) the health plan issuer can demonstrate
12 to the applicable certifying authority (as defined
13 in section 172(d)), if required, that its financial
14 or provider capacity to serve previously covered
15 participants and beneficiaries (and additional
16 participants and beneficiaries who will be ex-
17 pected to enroll because of their affiliation with
18 a group purchaser or such previously covered
19 participants or beneficiaries) will be impaired if
20 the health plan issuer is required to offer cov-
21 erage to additional group purchasers.

22 Such health plan issuer shall be prohibited from of-
23 fering coverage after a cessation in offering coverage
24 under this paragraph for a 6-month period or until
25 the health plan issuer can demonstrate to the appli-

1 cable certifying authority (as defined in section
2 172(d)) that the health plan issuer has adequate ca-
3 pacity, whichever is later.

4 (2) FIRST-COME-FIRST-SERVED.—A health plan
5 issuer offering a group health plan is only eligible to
6 exercise the limitations provided for in paragraph
7 (1) if the health plan issuer offers coverage to group
8 purchasers under such plan on a first-come-first-
9 served basis or other basis established by a State to
10 ensure a fair opportunity to enroll in the plan and
11 avoid risk selection.

12 (c) CONSTRUCTION.—

13 (1) MARKETING OF GROUP HEALTH PLANS.—
14 Nothing in this section shall be construed to prevent
15 a State from requiring health plan issuers offering
16 group health plans to actively market such plans.

17 (2) INVOLUNTARY OFFERING OF GROUP
18 HEALTH PLANS.—Nothing in this section shall be
19 construed to require a health plan issuer to involun-
20 tarily offer group health plans in a particular mar-
21 ket. For the purposes of this paragraph, the term
22 “market” means either the large employer market or
23 the small employer market (as defined under appli-
24 cable State law, or if not so defined, an employer
25 with not more than 50 employees).

1 **SEC. 136. GUARANTEED RENEWABILITY OF HEALTH COV-**
 2 **ERAGE.**

3 (a) IN GENERAL.—

4 (1) GROUP PURCHASER.—Subject to sub-
 5 sections (b) and (c), a group health plan shall be re-
 6 newed or continued in force by a health plan issuer
 7 at the option of the group purchaser, except that the
 8 requirement of this subparagraph shall not apply in
 9 the case of—

10 (A) the nonpayment of premiums or con-
 11 tributions by the group purchaser in accordance
 12 with the terms of the group health plan or
 13 where the health plan issuer has not received
 14 timely premium payments;

15 (B) fraud or misrepresentation of material
 16 fact on the part of the group purchaser;

17 (C) the termination of the group health
 18 plan in accordance with subsection (b); or

19 (D) the failure of the group purchaser to
 20 meet contribution or participation requirements
 21 in accordance with paragraph (3).

22 (2) PARTICIPANT.—Subject to subsections (b)
 23 and (c), coverage under an employee health benefit
 24 plan or group health plan shall be renewed or con-
 25 tinued in force, if the group purchaser elects to con-
 26 tinue to provide coverage under such plan, at the op-

1 tion of the participant (or beneficiary where such
2 right exists under the terms of the plan or under ap-
3 plicable law), except that the requirement of this
4 paragraph shall not apply in the case of—

5 (A) the nonpayment of premiums or con-
6 tributions by the participant or beneficiary in
7 accordance with the terms of the employee
8 health benefit plan or group health plan or
9 where such plan has not received timely pre-
10 mium payments;

11 (B) fraud or misrepresentation of material
12 fact on the part of the participant or bene-
13 ficiary relating to an application for coverage or
14 claim for benefits;

15 (C) the termination of the employee health
16 benefit plan or group health plan;

17 (D) loss of eligibility for continuation cov-
18 erage as described in part 6 of subtitle B of
19 title I of the Employee Retirement Income Se-
20 curity Act of 1974 (29 U.S.C. 1161 et seq.); or

21 (E) failure of a participant or beneficiary
22 to meet requirements for eligibility for coverage
23 under an employee health benefit plan or group
24 health plan that are not prohibited by this Act.

(3) RULES OF CONSTRUCTION.—Nothing in this subsection, nor in section 135(a), shall be construed to—

(A) preclude a health plan issuer from establishing employer contribution rules or group participation rules for group health plans as allowed under applicable State law;

(B) preclude a plan defined in section 3(37) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102(37)) from establishing employer contribution rules or group participation rules; or

(C) permit individuals to decline coverage under an employee health benefit plan if such right is not otherwise available under such plan.

(b) TERMINATION OF GROUP HEALTH PLANS.—

(1) PARTICULAR TYPE OF GROUP HEALTH PLAN NOT OFFERED.—In any case in which a health plan issuer decides to discontinue offering a particular type of group health plan, a group health plan of such type may be discontinued by the health plan issuer only if—

(A) the health plan issuer provides notice to each group purchaser covered under a group health plan of this type (and participants and

1 beneficiaries covered under such group health
 2 plan) of such discontinuation at least 90 days
 3 prior to the date of the discontinuation of such
 4 plan;

5 (B) the health plan issuer offers to each
 6 group purchaser covered under a group health
 7 plan of this type, the option to purchase any
 8 other group health plan currently being offered
 9 by the health plan issuer; and

10 (C) in exercising the option to discontinue
 11 a group health plan of this type and in offering
 12 one or more replacement plans, the health plan
 13 issuer acts uniformly without regard to the
 14 health status or insurability of participants or
 15 beneficiaries covered under the group health
 16 plan, or new participants or beneficiaries who
 17 may become eligible for coverage under the
 18 group health plan.

19 (2) DISCONTINUANCE OF ALL GROUP HEALTH
 20 PLANS.—

21 (A) IN GENERAL.—In any case in which a
 22 health plan issuer elects to discontinue offering
 23 all group health plans in a State, a group
 24 health plan may be discontinued by the health
 25 plan issuer only if—

1 (i) the health plan issuer provides no-
 2 tice to the applicable certifying authority
 3 (as defined in section 172(d)) and to each
 4 group purchaser (and participants and
 5 beneficiaries covered under such group
 6 health plan) of such discontinuation at
 7 least 180 days prior to the date of the ex-
 8 piration of such plan; and

9 (ii) all group health plans issued or
 10 delivered for issuance in the State are dis-
 11 continued and coverage under such plans is
 12 not renewed.

13 (B) APPLICATION OF PROVISIONS.—The
 14 provisions of this paragraph and paragraph (3)
 15 may be applied separately by a health plan is-
 16 suer—

17 (i) to all group health plans offered to
 18 small employers (as defined under applica-
 19 ble State law, or if not so defined, an em-
 20 ployer with not more than 50 employees);
 21 or

22 (ii) to all other group health plans of-
 23 fered by the health plan issuer in the
 24 State.

1 (3) PROHIBITION ON MARKET REENTRY.—In
 2 the case of a discontinuation under paragraph (2),
 3 the health plan issuer may not provide for the issu-
 4 ance of any group health plan in the market sector
 5 (as described in paragraph (2)(B)) in which issuance
 6 of such group health plan was discontinued in the
 7 State involved during the 5-year period beginning on
 8 the date of the discontinuation of the last group
 9 health plan not so renewed.

10 (c) TREATMENT OF NETWORK PLANS.—

11 (1) GEOGRAPHIC LIMITATIONS.—A network
 12 plan (as defined in paragraph (2)) may deny contin-
 13 ued participation under such plan to participants or
 14 beneficiaries who neither live, reside, nor work in an
 15 area in which such network plan is offered, but only
 16 if such denial is applied uniformly, without regard to
 17 health status or the insurability of particular partici-
 18 pants or beneficiaries.

19 (2) NETWORK PLAN.—As used in paragraph
 20 (1), the term “network plan” means an employee
 21 health benefit plan or a group health plan that ar-
 22 ranges for the financing and delivery of health care
 23 services to participants or beneficiaries covered
 24 under such plan, in whole or in part, through ar-
 25 rangements with providers.

1 (d) COBRA COVERAGE.—Nothing in subsection
 2 (a)(2)(E) or subsection (c) shall be construed to affect any
 3 right to COBRA continuation coverage as described in
 4 part 6 of subtitle B of title I of the Employee Retirement
 5 Income Security Act of 1974 (29 U.S.C. 1161 et seq.).

6 **SEC. 137. PORTABILITY OF HEALTH COVERAGE AND LIM-**
 7 **TATION ON PREEXISTING CONDITION EXCLU-**
 8 **SIONS.**

9 (a) IN GENERAL.—An employee health benefit plan
 10 or a health plan issuer offering a group health plan may
 11 impose a limitation or exclusion of benefits relating to
 12 treatment of a preexisting condition based on the fact that
 13 the condition existed prior to the coverage of the partici-
 14 pant or beneficiary under the plan only if—

15 (1) the limitation or exclusion extends for a pe-
 16 riod of not more than 12 months after the date of
 17 enrollment in the plan;

18 (2) the limitation or exclusion does not apply to
 19 an individual who, within 30 days of the date of
 20 birth or placement for adoption (as determined
 21 under section 609(c)(3)(B) of the Employee Retire-
 22 ment Income Security Act of 1974 (29 U.S.C.
 23 1169(c)(3)(B)), was covered under the plan; and

24 (3) the limitation or exclusion does not apply to
 25 a pregnancy.

1 (b) CREDITING OF PREVIOUS QUALIFYING COV-
2 ERAGE.—

3 (1) IN GENERAL.—Subject to paragraph (4), an
4 employee health benefit plan or a health plan issuer
5 offering a group health plan shall provide that if a
6 participant or beneficiary is in a period of previous
7 qualifying coverage as of the date of enrollment
8 under such plan, any period of exclusion or limita-
9 tion of coverage with respect to a preexisting condi-
10 tion shall be reduced by 1 month for each month in
11 which the participant or beneficiary was in the pe-
12 riod of previous qualifying coverage. With respect to
13 an individual described in subsection (a)(2) who
14 maintains continuous coverage, no limitation or ex-
15 clusion of benefits relating to treatment of a pre-
16 existing condition may be applied to a child within
17 the child's first 12 months of life or within 12
18 months after the placement of a child for adoption.

19 (2) DISCHARGE OF DUTY.—An employee health
20 benefit plan shall provide documentation of coverage
21 to participants and beneficiaries whose coverage is
22 terminated under the plan. Pursuant to regulations
23 promulgated by the Secretary, the duty of an em-
24 ployee health benefit plan to verify previous qualify-
25 ing coverage with respect to a participant or bene-

1 ficiary is effectively discharged when such employee
 2 health benefit plan provides documentation to a par-
 3 ticipant or beneficiary that includes the following in-
 4 formation:

5 (A) the dates that the participant or bene-
 6 ficiary was covered under the plan; and

7 (B) the benefits and cost-sharing arrange-
 8 ment available to the participant or beneficiary
 9 under such plan.

10 An employee health benefit plan shall retain the doc-
 11 umentation provided to a participant or beneficiary
 12 under subparagraphs (A) and (B) for at least the
 13 12-month period following the date on which the
 14 participant or beneficiary ceases to be covered under
 15 the plan. Upon request, an employee health benefit
 16 plan shall provide a second copy of such documenta-
 17 tion to such participant or beneficiary within the 12-
 18 month period following the date of such ineligibility.

19 (3) DEFINITIONS.—As used in this section:

20 (A) PREVIOUS QUALIFYING COVERAGE.—

21 The term “previous qualifying coverage” means
 22 the period beginning on the date—

23 (i) a participant or beneficiary is en-
 24 rolled under an employee health benefit
 25 plan or a group health plan, and ending on

the date the participant or beneficiary is
not so enrolled; or

(ii) an individual is enrolled under an
individual health plan (as defined in sec-
tion 144) or under a public or private
health plan established under Federal or
State law, and ending on the date the indi-
vidual is not so enrolled;

for a continuous period of more than 30 days
(without regard to any waiting period).

(B) LIMITATION OR EXCLUSION OF BENE-
FITS RELATING TO TREATMENT OF A PRE-
EXISTING CONDITION.—The term “limitation or
exclusion of benefits relating to treatment of a
preexisting condition” means a limitation or ex-
clusion of benefits imposed on an individual
based on a preexisting condition of such individ-
ual.

(4) EFFECT OF PREVIOUS COVERAGE.—An em-
ployee health benefit plan or a health plan issuer of-
fering a group health plan may impose a limitation
or exclusion of benefits relating to the treatment of
a preexisting condition, subject to the limits in sub-
section (a)(1), only to the extent that such service
or benefit was not previously covered under the

1 group health plan, employee health benefit plan, or
2 individual health plan in which the participant or
3 beneficiary was enrolled immediately prior to enroll-
4 ment in the plan involved.

5 (c) LATE ENROLLEES.—Except as provided in sec-
6 tion 138, with respect to a participant or beneficiary en-
7 rolling in an employee health benefit plan or a group
8 health plan during a time that is other than the first op-
9 portunity to enroll during an enrollment period of at least
10 30 days, coverage with respect to benefits or services relat-
11 ing to the treatment of a preexisting condition in accord-
12 ance with subsections (a) and (b) may be excluded, except
13 the period of such exclusion may not exceed 18 months
14 beginning on the date of coverage under the plan.

15 (d) AFFILIATION PERIODS.—With respect to a par-
16 ticipant or beneficiary who would otherwise be eligible to
17 receive benefits under an employee health benefit plan or
18 a group health plan but for the operation of a preexisting
19 condition limitation or exclusion, if such plan does not uti-
20 lize a limitation or exclusion of benefits relating to the
21 treatment of a preexisting condition, such plan may im-
22 pose an affiliation period on such participant or bene-
23 ficiary not to exceed 60 days (or in the case of a late par-
24 ticipant or beneficiary described in subsection (c), 90
25 days) from the date on which the participant or bene-

1 ficiary would otherwise be eligible to receive benefits under
 2 the plan. An employee health benefit plan or a health plan
 3 issuer offering a group health plan may also use alter-
 4 native methods to address adverse selection as approved
 5 by the applicable certifying authority (as defined in section
 6 172(d)). During such an affiliation period, the plan may
 7 not be required to provide health care services or benefits
 8 and no premium shall be charged to the participant or
 9 beneficiary.

10 (e) PREEXISTING CONDITION.—For purposes of this
 11 section, the term “preexisting condition” means a condi-
 12 tion, regardless of the cause of the condition, for which
 13 medical advice, diagnosis, care, or treatment was rec-
 14 ommended or received within the 6-month period ending
 15 on the day before the effective date of the coverage (with-
 16 out regard to any waiting period).

17 (f) STATE FLEXIBILITY.—Nothing in this section
 18 shall be construed to preempt State laws that—

19 (1) require health plan issuers to impose a limi-
 20 tation or exclusion of benefits relating to the treat-
 21 ment of a preexisting condition for periods that are
 22 shorter than those provided for under this section;
 23 or

24 (2) allow individuals, participants, and bene-
 25 ficiaries to be considered to be in a period of pre-

1 vious qualifying coverage if such individual, partici-
2 pant, or beneficiary experiences a lapse in coverage
3 that is greater than the 30-day period provided for
4 under subsection (b)(3);
5 unless such laws are preempted by section 514 of the Em-
6 ployee Retirement Income Security Act of 1974 (29
7 U.S.C. 1144).

8 **SEC. 138. SPECIAL ENROLLMENT PERIODS.**

9 In the case of a participant, beneficiary or family
10 member who—

11 (1) through marriage, separation, divorce,
12 death, birth or placement of a child for adoption, ex-
13 periences a change in family composition affecting
14 eligibility under a group health plan, individual
15 health plan, or employee health benefit plan;

16 (2) experiences a change in employment status,
17 as described in section 603(2) of the Employee Re-
18 tirement Income Security Act of 1974 (29 U.S.C.
19 1163(2)), that causes the loss of eligibility for cov-
20 erage, other than COBRA continuation coverage
21 under a group health plan, individual health plan,
22 or employee health benefit plan; or

23 (3) experiences a loss of eligibility under a
24 group health plan, individual health plan, or em-

1 ployee health benefit plan because of a change in the
2 employment status of a family member;
3 each employee health benefit plan and each group health
4 plan shall provide for a special enrollment period extend-
5 ing for a reasonable time after such event that would per-
6 mit the participant to change the individual or family basis
7 of coverage or to enroll in the plan if coverage would have
8 been available to such individual, participant, or bene-
9 ficiary but for failure to enroll during a previous enroll-
10 ment period. Such a special enrollment period shall ensure
11 that a child born or placed for adoption shall be deemed
12 to be covered under the plan as of the date of such birth
13 or placement for adoption if such child is enrolled within
14 30 days of the date of such birth or placement for adop-
15 tion.

16 **SEC. 139. DISCLOSURE OF INFORMATION.**

17 (a) DISCLOSURE OF INFORMATION BY HEALTH PLAN
18 ISSUERS.—

19 (1) IN GENERAL.—In connection with the offer-
20 ing of any group health plan to a small employer (as
21 defined under applicable State law, or if not so de-
22 fined, an employer with not more than 50 employ-
23 ees), a health plan issuer shall make a reasonable
24 disclosure to such employer, as part of its sollicita-
25 tion and sales materials, of—

1 (A) the provisions of such group health
2 plan concerning the health plan issuer's right to
3 change premium rates and the factors that may
4 affect changes in premium rates;

5 (B) the provisions of such group health
6 plan relating to renewability of coverage;

7 (C) the provisions of such group health
8 plan relating to any preexisting condition provi-
9 sion; and

10 (D) descriptive information about the ben-
11 efits and premiums available under all group
12 health plans for which the employer is qualified.

13 Information shall be provided to small employers
14 under this paragraph in a manner determined to be
15 understandable by the average small employer, and
16 shall be sufficiently accurate and comprehensive to
17 reasonably inform small employers, participants and
18 beneficiaries of their rights and obligations under
19 the group health plan.

20 (2) EXCEPTION.—With respect to the require-
21 ment of paragraph (1), any information that is pro-
22 prietary and trade secret information under applica-
23 ble law shall not be subject to the disclosure require-
24 ments of such paragraph.

1 (3) CONSTRUCTION.—Nothing in this sub-
 2 section shall be construed to preempt State report-
 3 ing and disclosure requirements to the extent that
 4 such requirements are not preempted under section
 5 514 of the Employee Retirement Income Security
 6 Act of 1974 (29 U.S.C. 1144).

7 (b) DISCLOSURE OF INFORMATION TO PARTICIPANTS
 8 AND BENEFICIARIES.—

9 (1) IN GENERAL.—Section 104(b)(1) of the
 10 Employee Retirement Income Security Act of 1974
 11 (29 U.S.C. 1024(b)(1)) is amended in the matter
 12 following subparagraph (B)—

13 (A) by striking “102(a)(1),” and inserting
 14 “102(a)(1) that is not a material reduction in
 15 covered services or benefits provided,”; and

16 (B) by adding at the end thereof the fol-
 17 lowing new sentences: “If there is a modifica-
 18 tion or change described in section 102(a)(1)
 19 that is a material reduction in covered services
 20 or benefits provided, a summary description of
 21 such modification or change shall be furnished
 22 to participants not later than 60 days after the
 23 date of the adoption of the modification or
 24 change. In the alternative, the plan sponsors
 25 may provide such description at regular inter-

vals of not more than 90 days. The Secretary shall issue regulations within 180 days after the date of enactment of the American Family Income and Economic Security Act of 1996, providing alternative mechanisms to delivery by mail through which employee health benefit plans may notify participants of material reductions in covered services or benefits.”

(2) PLAN DESCRIPTION AND SUMMARY.—Section 102(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1022(b)) is amended—

(A) by inserting “including the office or title of the individual who is responsible for approving or denying claims for coverage of benefits” after “type of administration of the plan”;

(B) by inserting “including the name of the organization responsible for financing claims” after “source of financing of the plan”; and

(C) by inserting “including the office, contact, or title of the individual at the Department of Labor through which participants may seek assistance or information regarding their rights under this Act and subtitle C of title I

1 of the American Family Income and Economic
 2 Security Act of 1996 with respect to health
 3 benefits that are not offered through a group
 4 health plan.” after “benefits under the plan”.

5 **Subpart B—Individual Market Rules**

6 **SEC. 141. INDIVIDUAL HEALTH PLAN PORTABILITY.**

7 (a) LIMITATION ON REQUIREMENTS.—

8 (1) IN GENERAL.—With respect to an individ-
 9 ual desiring to enroll in an individual health plan, if
 10 such individual is in a period of previous qualifying
 11 coverage (as defined in section 137(b)(3)(A)(i))
 12 under one or more group health plans or employee
 13 health benefit plans that commenced 18 or more
 14 months prior to the date on which such individual
 15 desires to enroll in the individual plan, a health plan
 16 issuer described in paragraph (3) may not decline to
 17 offer coverage to such individual, or deny enrollment
 18 to such individual based on the health status, medi-
 19 cal condition, claims experience, receipt of health
 20 care, medical history, evidence of insurability, or dis-
 21 ability of the individual, except as described in sub-
 22 sections (b) and (c).

23 (2) HEALTH PROMOTION AND DISEASE PRE-
 24 VENTION.—Nothing in this subsection shall be con-
 25 strued to prevent a health plan issuer offering an in-

1 dividual health plan from establishing premium dis-
2 counts or modifying otherwise applicable copayments
3 or deductibles in return for adherence to programs
4 of health promotion or disease prevention.

5 (3) HEALTH PLAN ISSUER.—A health plan is-
6 suer described in this paragraph is a health plan is-
7 suer that issues or renews individual health plans.

8 (4) PREMIUMS.—Nothing in this subsection
9 shall be construed to affect the determination of a
10 health plan issuer as to the amount of the premium
11 payable under an individual health plan under appli-
12 cable State law.

13 (b) ELIGIBILITY FOR OTHER GROUP COVERAGE.—
14 The provisions of subsection (a) shall not apply to an indi-
15 vidual who is eligible for coverage under a group health
16 plan or an employee health benefit plan, or who has had
17 coverage terminated under a group health plan or em-
18 ployee health benefit plan for failure to make required pre-
19 mium payments or contributions, or for fraud or misrepre-
20 sentation of material fact, or who is otherwise eligible for
21 continuation coverage as described in part 6 of subtitle
22 B of title I of the Employee Retirement Income Security
23 Act of 1974 (29 U.S.C. 1161 et seq.) or under an equiva-
24 lent State program.

25 (c) APPLICATION OF CAPACITY LIMITS.—

1 (1) IN GENERAL.—Subject to paragraph (2), a
2 health plan issuer offering coverage to individuals
3 under an individual health plan may cease enrolling
4 individuals under the plan if—

5 (A) the health plan issuer ceases to enroll
6 any new individuals; and

7 (B) the health plan issuer can demonstrate
8 to the applicable certifying authority (as defined
9 in section 172(d)), if required, that its financial
10 or provider capacity to serve previously covered
11 individuals will be impaired if the health plan
12 issuer is required to enroll additional individ-
13 uals.

14 Such a health plan issuer shall be prohibited from
15 offering coverage after a cessation in offering cov-
16 erage under this paragraph for a 6-month period or
17 until the health plan issuer can demonstrate to the
18 applicable certifying authority (as defined in section
19 172(d)) that the health plan issuer has adequate ca-
20 pacity, whichever is later.

21 (2) FIRST-COME-FIRST-SERVED.—A health plan
22 issuer offering coverage to individuals under an indi-
23 vidual health plan is only eligible to exercise the lim-
24 itations provided for in paragraph (1) if the health
25 plan issuer provides for enrollment of individuals

1 under such plan on a first-come-first-served basis or
 2 other basis established by a State to ensure a fair
 3 opportunity to enroll in the plan and avoid risk se-
 4 lection.

5 (d) MARKET REQUIREMENTS.—

6 (1) IN GENERAL.—The provisions of subsection
 7 (a) shall not be construed to require that a health
 8 plan issuer offering group health plans to group pur-
 9 chasers offer individual health plans to individuals.

10 (2) CONVERSION POLICIES.—A health plan is-
 11 suer offering group health plans to group purchasers
 12 under this Act shall not be deemed to be a health
 13 plan issuer offering an individual health plan solely
 14 because such health plan issuer offers a conversion
 15 policy.

16 (3) MARKETING OF PLANS.—Nothing in this
 17 section shall be construed to prevent a State from
 18 requiring health plan issuers offering coverage to in-
 19 dividuals under an individual health plan to actively
 20 market such plan.

21 **SEC. 142. GUARANTEED RENEWABILITY OF INDIVIDUAL**
 22 **HEALTH COVERAGE.**

23 (a) IN GENERAL.—Subject to subsections (b) and (c),
 24 coverage for individuals under an individual health plan
 25 shall be renewed or continued in force by a health plan

1 issuer at the option of the individual, except that the re-
 2 quirement of this subsection shall not apply in the case
 3 of—

4 (1) the nonpayment of premiums or contribu-
 5 tions by the individual in accordance with the terms
 6 of the individual health plan or where the health
 7 plan issuer has not received timely premium pay-
 8 ments;

9 (2) fraud or misrepresentation of material fact
 10 on the part of the individual; or

11 (3) the termination of the individual health plan
 12 in accordance with subsection (b).

13 (b) TERMINATION OF INDIVIDUAL HEALTH
 14 PLANS.—

15 (1) PARTICULAR TYPE OF INDIVIDUAL HEALTH
 16 PLAN NOT OFFERED.—In any case in which a health
 17 plan issuer decides to discontinue offering a particu-
 18 lar type of individual health plan to individuals, an
 19 individual health plan may be discontinued by the
 20 health plan issuer only if—

21 (A) the health plan issuer provides notice
 22 to each individual covered under the plan of
 23 such discontinuation at least 90 days prior to
 24 the date of the expiration of the plan;

1 (B) the health plan issuer offers to each
2 individual covered under the plan the option to
3 purchase any other individual health plan cur-
4 rently being offered by the health plan issuer to
5 individuals; and

6 (C) in exercising the option to discontinue
7 the individual health plan and in offering one or
8 more replacement plans, the health plan issuer
9 acts uniformly without regard to the health sta-
10 tus or insurability of particular individuals.

11 (2) DISCONTINUANCE OF ALL INDIVIDUAL
12 HEALTH PLANS.—In any case in which a health plan
13 issuer elects to discontinue all individual health
14 plans in a State, an individual health plan may be
15 discontinued by the health plan issuer only if—

16 (A) the health plan issuer provides notice
17 to the applicable certifying authority (as defined
18 in section 172(d)) and to each individual cov-
19 ered under the plan of such discontinuation at
20 least 180 days prior to the date of the dis-
21 continuation of the plan; and

22 (B) all individual health plans issued or
23 delivered for issuance in the State are discon-
24 tinued and coverage under such plans is not re-
25 newed.

1 (3) PROHIBITION ON MARKET REENTRY.—In
2 the case of a discontinuation under paragraph (2),
3 the health plan issuer may not provide for the issu-
4 ance of any individual health plan in the State in-
5 volved during the 5-year period beginning on the
6 date of the discontinuation of the last plan not so
7 renewed.

8 (c) TREATMENT OF NETWORK PLANS.—

9 (1) GEOGRAPHIC LIMITATIONS.—A health plan
10 issuer which offers a network plan (as defined in
11 paragraph (2)) may deny continued participation
12 under the plan to individuals who neither live, re-
13 side, nor work in an area in which the individual
14 health plan is offered, but only if such denial is ap-
15 plied uniformly, without regard to health status or
16 the insurability of particular individuals.

17 (2) NETWORK PLAN.—As used in paragraph
18 (1), the term “network plan” means an individual
19 health plan that arranges for the financing and de-
20 livery of health care services to individuals covered
21 under such health plan, in whole or in part, through
22 arrangements with providers.

1 **SEC. 143. STATE FLEXIBILITY IN INDIVIDUAL MARKET RE-**
2 **FORMS.**

3 (a) IN GENERAL.—With respect to any State law
4 with respect to which the Governor of the State notifies
5 the Secretary of Health and Human Services that such
6 State law will achieve the goals of sections 141 and 142,
7 and that is in effect on, or enacted after, the date of enact-
8 ment of this Act (such as laws providing for guaranteed
9 issue, open enrollment by one or more health plan issuers,
10 high-risk pools, or mandatory conversion policies), such
11 State law shall apply in lieu of the standards described
12 in sections 141 and 142 unless the Secretary of Health
13 and Human Services determines, after considering the cri-
14 teria described in subsection (b)(1), in consultation with
15 the Governor and Insurance Commissioner or chief insur-
16 ance regulatory official of the State, that such State law
17 does not achieve the goals of providing access to affordable
18 health care coverage for those individuals described in sec-
19 tions 141 and 142.

20 (b) DETERMINATION.—

21 (1) IN GENERAL.—In making a determination
22 under subsection (a), the Secretary of Health and
23 Human Services shall only—

24 (A) evaluate whether the State law or pro-
25 gram provides guaranteed access to affordable

1 coverage to individuals described in sections
2 141 and 142;

3 (B) evaluate whether the State law or pro-
4 gram provides coverage for preexisting condi-
5 tions (as defined in section 137(e)) that were
6 covered under the individuals' previous group
7 health plan or employee health benefit plan for
8 individuals described in sections 141 and 142;

9 (C) evaluate whether the State law or pro-
10 gram provides individuals described in sections
11 141 and 142 with a choice of health plans or
12 a health plan providing comprehensive coverage;
13 and

14 (D) evaluate whether the application of the
15 standards described in sections 141 and 142
16 will have an adverse impact on the number of
17 individuals in such State having access to af-
18 fordable coverage.

19 (2) NOTICE OF INTENT.—If, within 6 months
20 after the date of enactment of this Act, the Governor
21 of a State notifies the Secretary of Health and
22 Human Services that the State intends to enact a
23 law, or modify an existing law, described in sub-
24 section (a), the Secretary of Health and Human
25 Services may not make a determination under such

1 subsection until the expiration of the 12-month pe-
 2 riod beginning on the date on which such notifica-
 3 tion is made, or until January 1, 1997, whichever is
 4 later. With respect to a State that provides notice
 5 under this paragraph and that has a legislature that
 6 does not meet within the 12-month period beginning
 7 on the date of enactment of this Act, the Secretary
 8 shall not make a determination under subsection (a)
 9 prior to January 1, 1998.

10 (3) NOTICE TO STATE.—If the Secretary of
 11 Health and Human Services determines that a State
 12 law or program does not achieve the goals described
 13 in subsection (a), the Secretary of Health and
 14 Human Services shall provide the State with ade-
 15 quate notice and reasonable opportunity to modify
 16 such law or program to achieve such goals prior to
 17 making a final determination under subsection (a).

18 (c) ADOPTION OF NAIC MODEL.—If, not later than
 19 9 months after the date of enactment of this Act—

20 (1) the National Association of Insurance Com-
 21 missioners (hereafter referred to as the “NAIC”),
 22 through a process which the Secretary of Health and
 23 Human Services determines has included consulta-
 24 tion with representatives of the insurance industry
 25 and consumer groups, adopts a model standard or

1 standards for reform of the individual health insur-
2 ance market; and

3 (2) the Secretary of Health and Human Serv-
4 ices determines, within 30 days of the adoption of
5 such NAIC standard or standards, that such stand-
6 ards comply with the goals of sections 141 and 142;
7 a State that elects to adopt such model standards or sub-
8 stantially adopt such model standards shall be deemed to
9 have met the requirements of sections 141 and 142 and
10 shall not be subject to a determination under subsection
11 (a).

12 **SEC. 144. DEFINITION.**

13 (a) IN GENERAL.—As used in this part, the term “in-
14 dividual health plan” means any contract, policy, certifi-
15 cate or other arrangement offered to individuals by a
16 health plan issuer that provides or pays for health benefits
17 (such as provider and hospital benefits) and that is not
18 a group health plan under section 131(6).

19 (b) ARRANGEMENTS NOT INCLUDED.—Such term
20 does not include the following, or any combination thereof:

21 (1) Coverage only for accident, or disability in-
22 come insurance, or any combination thereof.

23 (2) Medicare supplemental health insurance (as
24 defined under section 1882(g)(1) of the Social Secu-
25 rity Act).

1 (3) Coverage issued as a supplement to liability
2 insurance.

3 (4) Liability insurance, including general liabil-
4 ity insurance and automobile liability insurance.

5 (5) Workers' compensation or similar insurance.

6 (6) Automobile medical payment insurance.

7 (7) Coverage for a specified disease or illness.

8 (8) Hospital or fixed indemnity insurance.

9 (9) Short-term limited duration insurance.

10 (10) Credit-only, dental-only, or vision-only in-
11 surance.

12 (11) A health insurance policy providing bene-
13 fits only for long-term care, nursing home care,
14 home health care, community-based care, or any
15 combination thereof.

16 **Subpart C—COBRA Clarifications**

17 **SEC. 151. COBRA CLARIFICATIONS.**

18 (a) PUBLIC HEALTH SERVICE ACT.—

19 (1) PERIOD OF COVERAGE.—Section 2202(2) of
20 the Public Health Service Act (42 U.S.C. 300bb-
21 2(2)) is amended—

22 (A) in subparagraph (A)—

23 (i) by transferring the sentence imme-
24 diately preceding clause (iv) so as to ap-

1 pear immediately following such clause
2 (iv); and

3 (ii) in the last sentence (as so trans-
4 ferred)—

5 (I) by inserting “, or a bene-
6 ficiary-family member of the individ-
7 ual,” after “an individual”; and

8 (II) by striking “at the time of a
9 qualifying event described in section
10 2203(2)” and inserting “at any time
11 during the initial 18-month period of
12 continuing coverage under this title”;

13 (B) in subparagraph (D)(i), by inserting
14 before “, or” the following: “, except that the
15 exclusion or limitation contained in this clause
16 shall not be considered to apply to a plan under
17 which a preexisting condition or exclusion does
18 not apply to an individual otherwise eligible for
19 continuation coverage under this section be-
20 cause of the provision of subtitle C of title I of
21 the American Family Income and Economic Se-
22 curity Act of 1996”; and

23 (C) in subparagraph (E), by striking “at
24 the time of a qualifying event described in sec-
25 tion 2203(2)” and inserting “at any time dur-

1 ing the initial 18-month period of continuing
2 coverage under this title”.

3 (2) ELECTION.—Section 2205(1)(C) of the
4 Public Health Service Act (42 U.S.C. 300bb–
5 5(1)(C)) is amended—

6 (A) in clause (i), by striking “or” at the
7 end thereof;

8 (B) in clause (ii), by striking the period
9 and inserting “, or”; and

10 (C) by adding at the end thereof the fol-
11 lowing new clause:

12 “(iii) in the case of an individual de-
13 scribed in the last sentence of section
14 2202(2)(A), or a beneficiary-family mem-
15 ber of the individual, the date such individ-
16 ual is determined to have been disabled.”

17 (3) NOTICES.—Section 2206(3) of the Public
18 Health Service Act (42 U.S.C. 300bb–6(3)) is
19 amended by striking “at the time of a qualifying
20 event described in section 2203(2)” and inserting
21 “at any time during the initial 18-month period of
22 continuing coverage under this title”.

23 (4) BIRTH OR ADOPTION OF A CHILD.—Section
24 2208(3)(A) of the Public Health Service Act (42

1 U.S.C. 300bb–8(3)(A)) is amended by adding at the
 2 end thereof the following new flush sentence:

3 “Such term shall also include a child who is born to
 4 or placed for adoption with the covered employee
 5 during the period of continued coverage under this
 6 title.”

7 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
 8 OF 1974.—

9 (1) PERIOD OF COVERAGE.—Section 602(2) of
 10 the Employee Retirement Income Security Act of
 11 1974 (29 U.S.C. 1162(2)) is amended—

12 (A) in the last sentence of subparagraph

13 (A)—

14 (i) by inserting “, or a beneficiary-
 15 family member of the individual,” after
 16 “an individual”; and

17 (ii) by striking “at the time of a
 18 qualifying event described in section
 19 603(2)” and inserting “at any time during
 20 the initial 18-month period of continuing
 21 coverage under this part”;

22 (B) in subparagraph (D)(i), by inserting
 23 before “, or” the following: “, except that the
 24 exclusion or limitation contained in this clause
 25 shall not be considered to apply to a plan under

1 which a preexisting condition or exclusion does
 2 not apply to an individual otherwise eligible for
 3 continuation coverage under this section be-
 4 cause of the provision of subtitle C of title I of
 5 the American Family Income and Economic Se-
 6 curity Act of 1996”; and

7 (C) in subparagraph (E), by striking “at
 8 the time of a qualifying event described in sec-
 9 tion 603(2)” and inserting “at any time during
 10 the initial 18-month period of continuing cov-
 11 erage under this part”.

12 (2) ELECTION.—Section 605(1)(C) of the Em-
 13 ployee Retirement Income Security Act of 1974 (29
 14 U.S.C. 1165(1)(C)) is amended—

15 (A) in clause (i), by striking “or” at the
 16 end thereof;

17 (B) in clause (ii), by striking the period
 18 and inserting “, or”; and

19 (C) by adding at the end thereof the fol-
 20 lowing new clause:

21 “(iii) in the case of an individual de-
 22 scribed in the last sentence of section
 23 602(2)(A), or a beneficiary-family member
 24 of the individual, the date such individual
 25 is determined to have been disabled.”

1 (3) NOTICES.—Section 606(3) of the Employee
 2 Retirement Income Security Act of 1974 (29 U.S.C.
 3 1166(3)) is amended by striking “at the time of a
 4 qualifying event described in section 603(2)” and in-
 5 serting “at any time during the initial 18-month pe-
 6 riod of continuing coverage under this part”.

7 (4) BIRTH OR ADOPTION OF A CHILD.—Section
 8 607(3)(A) of the Employee Retirement Income Secu-
 9 rity Act of 1974 (29 U.S.C. 1167(3)) is amended by
 10 adding at the end thereof the following new flush
 11 sentence:

12 “Such term shall also include a child who is born to
 13 or placed for adoption with the covered employee
 14 during the period of continued coverage under this
 15 part.”

16 (c) INTERNAL REVENUE CODE OF 1986.—

17 (1) PERIOD OF COVERAGE.—Section
 18 4980B(f)(2)(B) of the Internal Revenue Code of
 19 1986 is amended—

20 (A) in the last sentence of clause (i) by
 21 striking “at the time of a qualifying event de-
 22 scribed in paragraph (3)(B)” and inserting “at
 23 any time during the initial 18-month period of
 24 continuing coverage under this section”;

(B) in clause (iv)(I), by inserting before “, or” the following: “, except that the exclusion or limitation contained in this subclause shall not be considered to apply to a plan under which a preexisting condition or exclusion does not apply to an individual otherwise eligible for continuation coverage under this subsection because of the provision of subtitle C of title I of the American Family Income and Economic Security Act of 1996”; and

(C) in clause (v), by striking “at the time of a qualifying event described in paragraph (3)(B)” and inserting “at any time during the initial 18-month period of continuing coverage under this section”.

(2) ELECTION.—Section 4980B(f)(5)(A)(iii) of the Internal Revenue Code of 1986 is amended—

(A) in subclause (I), by striking “or” at the end thereof;

(B) in subclause (II), by striking the period and inserting “, or”; and

(C) by adding at the end thereof the following new subclause:

“(III) in the case of an qualified beneficiary described in the last sen-

1 tence of paragraph (2)(B)(i), the date
 2 such individual is determined to have
 3 been disabled.”

4 (3) NOTICES.—Section 4980B(f)(6)(C) of the
 5 Internal Revenue Code of 1986 is amended by strik-
 6 ing “at the time of a qualifying event described in
 7 paragraph (3)(B)” and inserting “at any time dur-
 8 ing the initial 18-month period of continuing cov-
 9 erage under this section”.

10 (4) BIRTH OR ADOPTION OF A CHILD.—Section
 11 4980B(g)(1)(A) of the Internal Revenue Code of
 12 1986 is amended by adding at the end thereof the
 13 following new flush sentence:

14 “Such term shall also include a child who
 15 is born to or placed for adoption with the
 16 covered employee during the period of con-
 17 tinued coverage under this section.”

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to qualifying events occurring on
 20 or after the date of the enactment of this Act for plan
 21 years beginning after December 31, 1996.

22 (e) NOTIFICATION OF CHANGES.—Not later than 60
 23 days prior to the date on which this section becomes effec-
 24 tive, each group health plan (covered under title XXII of
 25 the Public Health Service Act, part 6 of subtitle B of title

1 I of the Employee Retirement Income Security Act of
 2 1974, and section 4980B(f) of the Internal Revenue Code
 3 of 1986) shall notify each qualified beneficiary who has
 4 elected continuation coverage under such title, part or sec-
 5 tion of the amendments made by this section.

6 **Subpart D—Private Health Plan Purchasing**
 7 **Cooperatives**

8 **SEC. 161. PRIVATE HEALTH PLAN PURCHASING COOPERA-**
 9 **TIVES.**

10 (a) DEFINITION.—As used in this subtitle, the term
 11 “health plan purchasing cooperative” means a group of
 12 individuals or employers that, on a voluntary basis and
 13 in accordance with this section, form a cooperative for the
 14 purpose of purchasing individual health plans or group
 15 health plans offered by health plan issuers. A health plan
 16 issuer, agent, broker or any other individual or entity en-
 17 gaged in the sale of insurance may not underwrite a coop-
 18 erative.

19 (b) CERTIFICATION.—

20 (1) IN GENERAL.—If a group described in sub-
 21 section (a) desires to form a health plan purchasing
 22 cooperative in accordance with this section and such
 23 group appropriately notifies the State and the Sec-
 24 retary of such desire, the State, upon a determina-
 25 tion that such group meets the requirements of this

1 section, shall certify the group as a health plan pur-
 2 chasing cooperative. The State shall make a deter-
 3 mination of whether such group meets the require-
 4 ments of this section in a timely fashion. Each such
 5 cooperative shall also be registered with the Sec-
 6 retary.

7 (2) STATE REFUSAL TO CERTIFY.—If a State
 8 fails to implement a program for certifying health
 9 plan purchasing cooperatives in accordance with the
 10 standards under this subtitle, the Secretary shall
 11 certify and oversee the operations of such coopera-
 12 tives in such State.

13 (3) INTERSTATE COOPERATIVES.—For purposes
 14 of this section, a health plan purchasing cooperative
 15 operating in more than one State shall be certified
 16 by the State in which the cooperative is domiciled.
 17 States may enter into cooperative agreements for the
 18 purpose of certifying and overseeing the operation of
 19 such cooperatives. For purposes of this subsection, a
 20 cooperative shall be considered to be domiciled in the
 21 State in which most of the members of the coopera-
 22 tive reside.

23 (c) BOARD OF DIRECTORS.—

24 (1) IN GENERAL.—Each health plan purchasing
 25 cooperative shall be governed by a Board of Direc-

1 tors that shall be responsible for ensuring the per-
2 formance of the duties of the cooperative under this
3 section. The Board shall be composed of a broad
4 cross-section of representatives of employers, em-
5 ployees, and individuals participating in the coopera-
6 tive. A health plan issuer, agent, broker, or any
7 other individual or entity engaged in the sale of indi-
8 vidual health plans or group health plans may not
9 hold or control any right to vote with respect to a
10 cooperative.

11 (2) LIMITATION ON COMPENSATION.—A health
12 plan purchasing cooperative may not provide com-
13 pensation to members of the Board of Directors.
14 The cooperative may provide reimbursements to
15 such members for the reasonable and necessary ex-
16 penses incurred by the members in the performance
17 of their duties as members of the Board.

18 (3) CONFLICT OF INTEREST.—No member of
19 the Board of Directors (or family members of such
20 members) nor any management personnel of the co-
21 operative may be employed by, be a consultant for,
22 be a member of the board of directors of, be affili-
23 ated with an agent of, or otherwise be a representa-
24 tive of any health plan issuer, health care provider,
25 or agent or broker. Nothing in the preceding sen-

1 tence shall limit a member of the Board from pur-
2 chasing coverage offered through the cooperative.

3 (d) MEMBERSHIP AND MARKETING AREA.—

4 (1) MEMBERSHIP.—A health plan purchasing
5 cooperative may establish limits on the maximum
6 size of employers who may become members of the
7 cooperative, and may determine whether to permit
8 individuals to become members. Upon the establish-
9 ment of such membership requirements, the coopera-
10 tive shall, except as provided in paragraph (2), ac-
11 cept all employers (or individuals) residing within
12 the area served by the cooperative who meet such re-
13 quirements as members on a first-come, first-served
14 basis, or on another basis established by the State
15 to ensure equitable access to the cooperative.

16 (2) MARKETING AREA.—A State may establish
17 rules regarding the geographic area that must be
18 served by a health plan purchasing cooperative. With
19 respect to a State that has not established such
20 rules, a health plan purchasing cooperative operating
21 in the State shall define the boundaries of the area
22 to be served by the cooperative, except that such
23 boundaries may not be established on the basis of
24 health status or insurability of the populations that
25 reside in the area.

1 (e) DUTIES AND RESPONSIBILITIES.—

2 (1) IN GENERAL.—A health plan purchasing co-
3 operative shall—

4 (A) enter into agreements with multiple,
5 unaffiliated health plan issuers, except that the
6 requirement of this subparagraph shall not
7 apply in regions (such as remote or frontier
8 areas) in which compliance with such require-
9 ment is not possible;

10 (B) enter into agreements with employers
11 and individuals who become members of the co-
12 operative;

13 (C) participate in any program of risk-ad-
14 justment or reinsurance, or any similar pro-
15 gram, that is established by the State;

16 (D) prepare and disseminate comparative
17 health plan materials (including information
18 about cost, quality, benefits, and other informa-
19 tion concerning group health plans and individ-
20 ual health plans offered through the coopera-
21 tive);

22 (E) actively market to all eligible employ-
23 ers and individuals residing within the service
24 area; and

1 (F) act as an ombudsman for group health
2 plan or individual health plan enrollees.

3 (2) PERMISSIBLE ACTIVITIES.—A health plan
4 purchasing cooperative may perform such other
5 functions as necessary to further the purposes of
6 this subtitle, including—

7 (A) collecting and distributing premiums
8 and performing other administrative functions;

9 (B) collecting and analyzing surveys of en-
10 rollee satisfaction;

11 (C) charging membership fee to enrollees
12 (such fees may not be based on health status)
13 and charging participation fees to health plan
14 issuers;

15 (D) cooperating with (or accepting as
16 members) employers who provide health bene-
17 fits directly to participants and beneficiaries
18 only for the purpose of negotiating with provid-
19 ers; and

20 (E) negotiating with health care providers
21 and health plan issuers.

22 (f) LIMITATIONS ON COOPERATIVE ACTIVITIES.—A
23 health plan purchasing cooperative shall not—

24 (1) perform any activity relating to the licens-
25 ing of health plan issuers;

1 (2) assume financial risk directly or indirectly
2 on behalf of members of a health plan purchasing
3 cooperative relating to any group health plan or in-
4 dividual health plan;

5 (3) establish eligibility, continuation of eligi-
6 bility, enrollment, or premium contribution require-
7 ments for participants, beneficiaries, or individuals
8 based on health status, medical condition, claims ex-
9 perience, receipt of health care, medical history, evi-
10 dence of insurability, or disability;

11 (4) operate on a for-profit or other basis where
12 the legal structure of the cooperative permits profits
13 to be made and not returned to the members of the
14 cooperative, except that a for-profit health plan pur-
15 chasing cooperative may be formed by a nonprofit
16 organization—

17 (A) in which membership in such organiza-
18 tion is not based on health status, medical con-
19 dition, claims experience, receipt of health care,
20 medical history, evidence of insurability, or dis-
21 ability; and

22 (B) that accepts as members all employers
23 or individuals on a first-come, first-served basis,
24 subject to any established limit on the maxi-

1 mum size of an employer that may become a
2 member; or

3 (5) perform any other activities that conflict or
4 are inconsistent with the performance of its duties
5 under this subtitle.

6 (g) LIMITED PREEMPTION OF CERTAIN STATE
7 LAWS.—

8 (1) IN GENERAL.—With respect to a health
9 plan purchasing cooperative that meets the require-
10 ments of this section, State fictitious group laws
11 shall be preempted.

12 (2) HEALTH PLAN ISSUERS.—

13 (A) RATING.—With respect to a health
14 plan issuer offering a group health plan or indi-
15 vidual health plan through a health plan pur-
16 chasing cooperative that meets the requirements
17 of this section, State premium rating require-
18 ment laws, except to the extent provided under
19 subparagraph (B), shall be preempted unless
20 such laws permit premium rates negotiated by
21 the cooperative to be less than rates that would
22 otherwise be permitted under State law, if such
23 rating differential is not based on differences in
24 health status or demographic factors.

1 (B) EXCEPTION.—State laws referred to in
2 subparagraph (A) shall not be preempted if
3 such laws—

4 (i) prohibit the variance of premium
5 rates among employers, plan sponsors, or
6 individuals that are members of a health
7 plan purchasing cooperative in excess of
8 the amount of such variations that would
9 be permitted under such State rating laws
10 among employers, plan sponsors, and indi-
11 viduals that are not members of the coop-
12 erative; and

13 (ii) prohibit a percentage increase in
14 premium rates for a new rating period that
15 is in excess of that which would be per-
16 mitted under State rating laws.

17 (C) BENEFITS.—Except as provided in
18 subparagraph (D), a health plan issuer offering
19 a group health plan or individual health plan
20 through a health plan purchasing cooperative
21 shall comply with all State mandated benefit
22 laws that require the offering of any services,
23 category or care, or services of any class or type
24 of provider.

1 (D) EXCEPTION.—In those States that
 2 have enacted laws authorizing the issuance of
 3 alternative benefit plans to small employers,
 4 health plan issuers may offer such alternative
 5 benefit plans through a health plan purchasing
 6 cooperative that meets the requirements of this
 7 section.

8 (h) RULES OF CONSTRUCTION.—Nothing in this sec-
 9 tion shall be construed to—

10 (1) require that a State organize, operate, or
 11 otherwise create health plan purchasing cooperatives;

12 (2) otherwise require the establishment of
 13 health plan purchasing cooperatives;

14 (3) require individuals, plan sponsors, or em-
 15 ployers to purchase group health plans or individual
 16 health plans through a health plan purchasing coop-
 17 erative;

18 (4) require that a health plan purchasing coop-
 19 erative be the only type of purchasing arrangement
 20 permitted to operate in a State;

21 (5) confer authority upon a State that the State
 22 would not otherwise have to regulate health plan is-
 23 suers or employee health benefits plans; or

24 (6) confer authority upon a State (or the Fed-
 25 eral Government) that the State (or Federal Govern-

12 **PART II—APPLICATION AND ENFORCEMENT OF**
13 **STANDARDS**

15 (a) CONSTRUCTION.—

(A) IN GENERAL.—A requirement or standard imposed under this subtitle on a group health plan or individual health plan offered by a health plan issuer shall be deemed to be a requirement or standard imposed on the health plan issuer. Such requirements or standards shall be enforced by the State insurance commissioner for the State involved or the official or officials designated by the State to en-

1 force the requirements of this subtitle. In the
 2 case of a group health plan offered by a health
 3 plan issuer in connection with an employee
 4 health benefit plan, the requirements or stand-
 5 ards imposed under this subtitle shall be en-
 6 forced with respect to the health plan issuer by
 7 the State insurance commissioner for the State
 8 involved or the official or officials designated by
 9 the State to enforce the requirements of this
 10 subtitle.

11 (B) LIMITATION.—Except as provided in
 12 subsection (c), the Secretary shall not enforce
 13 the requirements or standards of this subtitle
 14 as they relate to health plan issuers, group
 15 health plans, or individual health plans. In no
 16 case shall a State enforce the requirements or
 17 standards of this subtitle as they relate to em-
 18 ployee health benefit plans.

19 (2) PREEMPTION OF STATE LAW.—Nothing in
 20 this subtitle shall be construed to prevent a State
 21 from establishing, implementing, or continuing in ef-
 22 fect standards and requirements—

23 (A) not prescribed in this subtitle; or

24 (B) related to the issuance, renewal, or
 25 portability of health insurance or the establish-

1 ment or operation of group purchasing arrange-
2 ments, that are consistent with, and are not in
3 direct conflict with, this subtitle and provide
4 greater protection or benefit to participants,
5 beneficiaries or individuals.

6 (b) RULE OF CONSTRUCTION.—Nothing in this sub-
7 title shall be construed to affect or modify the provisions
8 of section 514 of the Employee Retirement Income Secu-
9 rity Act of 1974 (29 U.S.C. 1144).

10 (c) CONTINUATION.—Nothing in this subtitle shall be
11 construed as requiring a group health plan or an employee
12 health benefit plan to provide benefits to a particular par-
13 ticipant or beneficiary in excess of those provided under
14 the terms of such plan.

15 **SEC. 172. ENFORCEMENT OF STANDARDS.**

16 (a) HEALTH PLAN ISSUERS.—Each State shall re-
17 quire that each group health plan and individual health
18 plan issued, sold, renewed, offered for sale or operated in
19 such State by a health plan issuer meet the standards es-
20 tablished under this subtitle pursuant to an enforcement
21 plan filed by the State with the Secretary. A State shall
22 submit such information as required by the Secretary
23 demonstrating effective implementation of the State en-
24 forcement plan.

1 (b) EMPLOYEE HEALTH BENEFIT PLANS.—With re-
2 spect to employee health benefit plans, the Secretary shall
3 enforce the reform standards established under this sub-
4 title in the same manner as provided for under sections
5 502, 504, 506, and 510 of the Employee Retirement In-
6 come Security Act of 1974 (29 U.S.C. 1132, 1134, 1136,
7 and 1140). The civil penalties contained in paragraphs (1)
8 and (2) of section 502(c) of such Act (29 U.S.C.
9 1132(c)(1) and (2)) shall apply to any information re-
10 quired by the Secretary to be disclosed and reported under
11 this section.

12 (c) FAILURE TO IMPLEMENT PLAN.—In the case of
13 the failure of a State to substantially enforce the stand-
14 ards and requirements set forth in this subtitle with re-
15 spect to group health plans and individual health plans
16 as provided for under the State enforcement plan filed
17 under subsection (a), the Secretary, in consultation with
18 the Secretary of Health and Human Services, shall imple-
19 ment an enforcement plan meeting the standards of this
20 subtitle in such State. In the case of a State that fails
21 to substantially enforce the standards and requirements
22 set forth in this subtitle, each health plan issuer operating
23 in such State shall be subject to civil enforcement as pro-
24 vided for under sections 502, 504, 506, and 510 of the
25 Employee Retirement Income Security Act of 1974 (29

1 U.S.C. 1132, 1134, 1136, and 1140). The civil penalties
2 contained in paragraphs (1) and (2) of section 502(c) of
3 such Act (29 U.S.C. 1132(c)(1) and (2)) shall apply to
4 any information required by the Secretary to be disclosed
5 and reported under this section.

6 (d) APPLICABLE CERTIFYING AUTHORITY.—As used
7 in this part, the term “applicable certifying authority”
8 means, with respect to—

9 (1) health plan issuers, the State insurance
10 commissioner or official or officials designated by
11 the State to enforce the requirements of this subtitle
12 for the State involved; and

13 (2) an employee health benefit plan, the Sec-
14 retary.

15 (e) REGULATIONS.—The Secretary may promulgate
16 such regulations as may be necessary or appropriate to
17 carry out this subtitle.

18 (f) TECHNICAL AMENDMENT.—Section 508 of the
19 Employee Retirement Income Security Act of 1974 (29
20 U.S.C. 1138) is amended by inserting “and under subtitle
21 C of title I of the American Family Income and Economic
22 Security Act of 1996” before the period.

1 **PART III—MISCELLANEOUS PROVISIONS**

2 **SEC. 181. HMOS ALLOWED TO OFFER PLANS WITH**
 3 **DEDUCTIBLES TO INDIVIDUALS WITH MEDI-**
 4 **CAL SAVINGS ACCOUNTS.**

5 (a) IN GENERAL.—Section 1301(b) of the Public
 6 Health Service Act (42 U.S.C. 300e(b)) is amended by
 7 adding at the end the following new paragraph:

8 “(6)(A) If a member certifies that a medical
 9 savings account has been established for the benefit
 10 of such member, a health maintenance organization
 11 may, at the request of such member reduce the basic
 12 health services payment otherwise determined under
 13 paragraph (1) by requiring the payment of a deduct-
 14 ible by the member for basic health services.

15 “(B) For purposes of this paragraph, the term
 16 ‘medical savings account’ means an account which,
 17 by its terms, allows the deposit of funds and the use
 18 of such funds and income derived from the invest-
 19 ment of such funds for the payment of the deduct-
 20 ible described in subparagraph (A).”

21 (b) MEDICAL SAVINGS ACCOUNTS.—It is the sense
 22 of the Committee on Labor and Human Resources of the
 23 Senate that the establishment of medical savings accounts,
 24 including those defined in section 1301(b)(6)(B) of the
 25 Public Health Service Act (42 U.S.C. 300e(b)(6)(B)),
 26 should be encouraged as part of any health insurance re-

1 form legislation passed by the Senate through the use of
2 tax incentives relating to contributions to, the income
3 growth of, and the qualified use of, such accounts.

4 (c) SENSE OF THE SENATE.—It is the sense of the
5 Senate that the Congress should take measures to further
6 the purposes of this Act, including any necessary changes
7 to the Internal Revenue Code of 1986 to encourage groups
8 and individuals to obtain health coverage, and to promote
9 access, equity, portability, affordability, and security of
10 health benefits.

11 **SEC. 182. HEALTH COVERAGE AVAILABILITY STUDY.**

12 (a) IN GENERAL.—The Secretary of Health and
13 Human Services, in consultation with the Secretary, rep-
14 resentatives of State officials, consumers, and other rep-
15 resentatives of individuals and entities that have expertise
16 in health insurance and employee benefits, shall conduct
17 a two-part study, and prepare and submit reports, in ac-
18 cordance with this section.

19 (b) EVALUATION OF AVAILABILITY.—Not later than
20 January 1, 1997, the Secretary of Health and Human
21 Services shall prepare and submit to the appropriate com-
22 mittees of Congress a report, concerning—

23 (1) an evaluation, based on the experience of
24 States, expert opinions, and such additional data as
25 may be available, of the various mechanisms used to

1 ensure the availability of reasonably priced health
2 coverage to employers purchasing group coverage
3 and to individuals purchasing coverage on a non-
4 group basis; and

5 (2) whether standards that limit the variation
6 in premiums will further the purposes of this sub-
7 title.

8 (c) EVALUATION OF EFFECTIVENESS.—Not later
9 than January 1, 1998, the Secretary of Health and
10 Human Services shall prepare and submit to the appro-
11 priate committees of Congress a report, concerning the ef-
12 fectiveness of the provisions of this subtitle and the var-
13 ious State laws, in ensuring the availability of reasonably
14 priced health coverage to employers purchasing group cov-
15 erage and individuals purchasing coverage on a non-group
16 basis.

17 **SEC. 183. SENSE OF THE COMMITTEE CONCERNING MEDI-**
18 **CARE.**

19 (a) FINDINGS.—The Committee on Labor and
20 Human Resources of the Senate finds that the Public
21 Trustees of Medicare concluded in their 1995 Annual Re-
22 port that—

23 (1) the medicare program is clearly
24 unsustainable in its present form;

1 (2) “the Hospital Insurance Trust Fund, which
 2 pays inpatient hospital expenses, will be able to pay
 3 benefits for only about 7 years and is severely out
 4 of financial balance in the long range”; and

5 (3) the Public Trustees “strongly recommend
 6 that the crisis presented by the financial condition of
 7 the Medicare trust fund be urgently addressed on a
 8 comprehensive basis, including a review of the
 9 programs’s financing methods, benefit provisions,
 10 and delivery mechanisms”.

11 (b) SENSE OF THE COMMITTEE.—It is the Sense of
 12 the Committee on Labor and Human Resources of the
 13 Senate that the Senate should take measures necessary
 14 to reform the Medicare program, to provide increased
 15 choice for seniors, and to respond to the findings of the
 16 Public Trustees by protecting the short-term solvency and
 17 long-term sustainability of the Medicare program.

18 **SEC. 184. EFFECTIVE DATE.**

19 Except as otherwise provided for in this subtitle, the
 20 provisions of this subtitle shall apply as follows:

21 (1) With respect to group health plans and in-
 22 dividual health plans, such provisions shall apply to
 23 plans offered, sold, issued, renewed, in effect, or op-
 24 erated on or after January 1, 1996.

1 (2) With respect to employee health benefit
 2 plans, on the first day of the first plan year begin-
 3 ning on or after January 1, 1996.

4 **SEC. 185. SEVERABILITY.**

5 If any provision of this subtitle or the application of
 6 such provision to any person or circumstance is held to
 7 be unconstitutional, the remainder of this subtitle and the
 8 application of the provisions of such to any person or cir-
 9 cumstance shall not be affected thereby.

10 **Subtitle D—Employee Security**

11 **SEC. 191. ALLOWANCE OF CREDIT FOR EMPLOYER EX-**
 12 **PENSES FOR CERTAIN ON-SITE DAY-CARE FA-**
 13 **CILITIES.**

14 (a) IN GENERAL.—Subpart D of part IV of sub-
 15 chapter A of chapter 1 (relating to business related cred-
 16 its) is amended by adding at the end thereof the following
 17 new section:

18 **“SEC. 45C. EMPLOYER ON-SITE DAY-CARE FACILITY CRED-**
 19 **IT.**

20 “(a) IN GENERAL.—For purposes of section 38, the
 21 employer on-site day-care facility credit determined under
 22 this section for the taxable year is an amount equal to
 23 50 percent of the qualified investment in property placed
 24 in service during such taxable year as part of a qualified
 25 day-care facility.

1 “(b) LIMITATION.—The credit allowable under sub-
 2 section (a) with respect to any qualified day-care facility
 3 shall not exceed \$150,000.

4 “(c) DEFINITIONS.—For purposes of this section—

5 “(1) QUALIFIED INVESTMENT.—The term
 6 ‘qualified investment’ means the amount paid or in-
 7 curred to acquire, construct, rehabilitate, or expand
 8 property—

9 “(A) which is to be used as part of a quali-
 10 fied day-care facility, and

11 “(B) with respect to which a deduction for
 12 depreciation (or amortization in lieu of depre-
 13 ciation) is allowable.

14 Such term includes only amounts properly charge-
 15 able to capital account.

16 “(2) QUALIFIED DAY-CARE FACILITY.—

17 “(A) IN GENERAL.—The term ‘qualified
 18 day-care facility’ means a facility—

19 “(i) operated by an employer to pro-
 20 vide dependent care assistance for enroll-
 21 ees, at least 30 percent of whom are de-
 22 pendants of employees of employers to
 23 which a credit under subsection (a) with
 24 respect to the facility is allowable,

1 “(ii) the principal use of which is to
 2 provide dependent care assistance de-
 3 scribed in clause (i),

4 “(iii) located on the premises of such
 5 employer,

6 “(iv) which meets the requirements of
 7 all applicable laws and regulations of the
 8 State or local government in which it is lo-
 9 cated, including, but not limited to, the li-
 10 censing of the facility as a day-care facil-
 11 ity, and

12 “(v) the use of which (or the eligibility
 13 to use) does not discriminate in favor of
 14 employees who are highly compensated em-
 15 ployees (within the meaning of section
 16 414(q)).

17 “(B) MULTIPLE EMPLOYERS.—With re-
 18 spect to a facility jointly operated by more than
 19 1 employer, the term ‘qualified day-care facility’
 20 shall include any facility located on the prem-
 21 ises of 1 employer and within a reasonable dis-
 22 tance from the premises of the other employers.

23 “(d) RECAPTURE OF CREDIT.—

24 “(1) IN GENERAL.—If, as of the close of any
 25 taxable year, there is a recapture event with respect

to any qualified day-care facility, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

“(A) the applicable recapture percentage,

and

“(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified on-site day-care expenses of the taxpayer with respect to such facility had been zero.

“(2) APPLICABLE RECAPTURE PERCENTAGE.—

“(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

“If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

“(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified day-care facility is placed in service by the taxpayer.

1 “(3) RECAPTURE EVENT DEFINED.—For pur-
 2 poses of this subsection, the term ‘recapture event’
 3 means—

4 “(A) CESSATION OF OPERATION.—The
 5 cessation of the operation of the facility as a
 6 qualified day-care facility.

7 “(B) CHANGE IN OWNERSHIP.—

8 “(i) IN GENERAL.—Except as pro-
 9 vided in clause (ii), the disposition of a
 10 taxpayer’s interest in a qualified day-care
 11 facility with respect to which the credit de-
 12 scribed in subsection (a) was allowable.

13 “(ii) AGREEMENT TO ASSUME RECAP-
 14 TURE LIABILITY.—Clause (i) shall not
 15 apply if the person acquiring such interest
 16 in the facility agrees in writing to assume
 17 the recapture liability of the person dispos-
 18 ing of such interest in effect immediately
 19 before such disposition. In the event of
 20 such an assumption, the person acquiring
 21 the interest in the facility shall be treated
 22 as the taxpayer for purposes of assessing
 23 any recapture liability (computed as if
 24 there had been no change in ownership).

25 “(4) SPECIAL RULES.—

“(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

“(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

“(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified day-care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

“(e) SPECIAL ALLOCATION RULES.—For purposes of this section—

“(1) ALLOCATION IN CASE OF MULTIPLE EMPLOYERS.—In the case of multiple employers jointly

operating a qualified day-care facility, the credit allowable by this section to each such employer shall be its proportionate share of the qualified on-site day-care expenses giving rise to the credit.

“(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

“(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

“(f) NO DOUBLE BENEFIT.—

“(1) REDUCTION IN BASIS.—For purposes of this subtitle—

“(A) IN GENERAL.—If a credit is determined under this section with respect to any property, the basis of such property shall be reduced by the amount of the credit so determined.

“(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under paragraph (1), the basis of such property (immediately be-

fore the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term ‘recapture amount’ means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

“(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.”

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) is amended—

(A) by striking “plus” at the end of paragraph (10),

(B) by striking the period at the end of paragraph (11), and inserting a comma and “plus”, and

(C) by adding at the end the following new paragraph:

“(12) the employer on-site day-care facility credit determined under section 45A.”

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

“Sec. 45C. Employer on-site day-care facility credit.”

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 1995.

4 **SEC. 192. EXCLUSION FOR GROUP LEGAL SERVICES MADE**
 5 **PERMANENT.**

6 (a) GENERAL RULE.—Section 120 of the Internal
 7 Revenue Code of 1986 (relating to amounts received under
 8 qualified group legal services plans) is amended by strik-
 9 ing subsection (e) and by redesignating subsection (f) as
 10 subsection (e).

11 (b) EFFECTIVE DATE.—The amendments made by
 12 subsection (a) shall apply to taxable years beginning after
 13 December 31, 1995.

14 **SEC. 193. ONE-TIME EXCLUSION OF GAIN FROM SALE OF**
 15 **PRINCIPAL RESIDENCE IF INDIVIDUAL OR**
 16 **SPOUSE IS TERMINALLY ILL.**

17 (a) IN GENERAL.—Paragraph (1) of section 121(a)
 18 (relating to one-time exclusion of gain from sale of prin-
 19 cipal residence by individual who has attained age 55) is
 20 amended to read as follows:

21 “(1)(A) the taxpayer has attained the age of 55
 22 years before the date of such sale or exchange, or
 23 “(B) the individual, or the individual’s spouse,
 24 is terminally ill on the date of the sale or exchange,
 25 and”.

1 (b) DEFINITION OF TERMINALLY ILL.—Subsection
2 (d) of section 121 is amended by adding at the end the
3 following new paragraph:

4 “(10) TERMINALLY ILL.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), an individual shall be treated as ter-
7 minally ill for purposes of subsection (a) if such
8 individual has an illness or physical condition
9 which can reasonably be expected to result in
10 death in 24 months or less.

11 “(B) PROOF REQUIREMENTS.—No individ-
12 ual shall be treated as terminally ill for pur-
13 poses of subsection (a) unless proof that the in-
14 dividual is terminally ill is furnished to the Sec-
15 retary at such time and in such manner as the
16 Secretary may prescribe.”

17 (c) CLERICAL AND CONFORMING AMENDMENTS.—

18 (1) The heading of section 121 is amended to
19 read as follows:

1 **“SEC. 121. ONE-TIME EXCLUSION OF GAIN FROM SALE OF**
 2 **PRINCIPAL RESIDENCE BY INDIVIDUAL WHO**
 3 **HAS ATTAINED AGE 55 OR IS TERMINALLY**
 4 **ILL.”**

5 (2) The table of sections for part III of sub-
 6 chapter B of chapter 1 is amended by amending the
 7 item relating to section 121 to read as follows:

“Sec. 121. One-time exclusion of gain from sale of principal resi-
 dence by individual who has attained age 55 or is
 terminally ill.”

8 (d) **EFFECTIVE DATE.**—The amendments made by
 9 this section shall apply to sales and exchanges occurring
 10 after the date of the enactment of this Act.

11 **TITLE II—INCENTIVES FOR** 12 **LIFELONG LEARNING**

13 **SEC. 201. CREDIT FOR EMPLOYEE TRAINING.**

14 (a) **IN GENERAL.**—Subpart D of part IV of sub-
 15 chapter A of chapter 1 (relating to business related cred-
 16 its), as amended by section 191, is amended by adding
 17 at the end the following new section:

18 **“SEC. 45D. EMPLOYEE TRAINING CREDIT.**

19 “(a) **IN GENERAL.**—For purposes of section 38, the
 20 amount of the employee training credit determined under
 21 this section for any taxable year shall be an amount equal
 22 to 50 percent of the qualified training expenses of the tax-
 23 payer for such taxable year.

1 “(b) QUALIFIED TRAINING EXPENSES.—For pur-
2 poses of this section—

3 “(1) IN GENERAL.—The term ‘qualified train-
4 ing expenses’ means the aggregate amount of ex-
5 penses paid or incurred by the taxpayer during the
6 taxable year in connection with the training of em-
7 ployees under any approved training program.

8 “(2) ONLY FIRST \$2,500 OF QUALIFIED TRAIN-
9 ING EXPENSES TAKEN INTO ACCOUNT.—The amount
10 of the qualified training expenses which may be
11 taken into account with respect to any employee
12 shall not exceed \$2,500.

13 “(3) APPROVED TRAINING PROGRAMS.—The
14 term ‘approved training program’ means—

15 “(A) any apprenticeship program reg-
16 istered with or approved by any Federal or
17 State agency or department,

18 “(B) any employer-designed or employer-
19 sponsored program which meets such minimum
20 requirements with respect to supervised on-the-
21 job experience and classroom instruction as the
22 Secretary of Labor shall prescribe by regula-
23 tions,

24 “(C) any cooperative education (within the
25 meaning given to such term by section 521(8)

1 of the Carl D. Perkins Vocational Education
2 Act),

3 “(D) any training program designated by
4 the Secretary of Labor which is carried out
5 under the supervision of an institution of higher
6 education (within the meaning given to such
7 term by section 1201(a) of the Higher Edu-
8 cation Act of 1965), or

9 “(E) any other program for improving job
10 skills directly related to employment which the
11 Secretary of Labor may approve under regula-
12 tions prescribed by such Secretary.

13 “(c) SPECIAL RULES.—For purposes of this sec-
14 tion—

15 “(1) AGGREGATION OF QUALIFIED TRAINING
16 EXPENSES.—

17 “(A) CONTROLLED GROUP OF CORPORA-
18 TIONS.—

19 “(i) IN GENERAL.—In determining
20 the amount of the credit under this sec-
21 tion—

22 “(I) all members of the same
23 controlled group of corporations shall
24 be treated as a single taxpayer, and

1 “(II) the credit (if any) allowable
 2 by this section to each such member
 3 shall be its proportionate share of the
 4 qualified training expenses giving rise
 5 to the credit.

6 “(ii) CONTROLLED GROUP OF COR-
 7 PORATIONS DEFINED.—The term ‘con-
 8 trolled group of corporations’ has the same
 9 meaning given to such term by section
 10 1563(a), except that—

11 “(I) ‘more than 50 percent’ shall
 12 be substituted for ‘at least 80 percent’
 13 each place it appears in section
 14 1563(a)(1), and

15 “(II) the determination shall be
 16 made without regard to subsections
 17 (a)(4) and (e)(3)(C) of section 1563.

18 “(B) COMMON CONTROL.—Under regula-
 19 tions prescribed by the Secretary, in determin-
 20 ing the amount of the credit under this sec-
 21 tion—

22 “(i) all trades or businesses (whether
 23 or not incorporated) which are under com-
 24 mon control shall be treated as a single
 25 taxpayer, and

1 “(ii) the credit (if any) allowable by
 2 this section to each such trade or business
 3 shall be its proportionate share of the
 4 qualified training expenses giving rise to
 5 the credit.

6 The regulations prescribed under this subpara-
 7 graph shall be based on principles similar to the
 8 principles which apply in the case of subpara-
 9 graph (A).

10 “(2) ALLOCATIONS.—

11 “(A) PASS-THRU IN THE CASE OF ES-
 12 TATES AND TRUSTS.—Under regulations pre-
 13 scribed by the Secretary, rules similar to the
 14 rules of subsection (d) of section 52 shall apply.

15 “(B) ALLOCATION IN THE CASE OF PART-
 16 NERSHIPS.—In the case of partnerships, the
 17 credit shall be allocated among partners under
 18 regulations prescribed by the Secretary.

19 “(d) ADDITIONAL BENEFIT.—The credit allowable
 20 under this section with respect to qualified training ex-
 21 penses of the taxpayer shall be in addition to any deduc-
 22 tion or credit allowed the taxpayer under any other provi-
 23 sion of this chapter with respect to such expenses.”

24 (b) EMPLOYEE TRAINING CREDIT TREATED AS
 25 OTHER BUSINESS CREDITS.—Section 38(b) of the Inter-

1 nal Revenue Code of 1986 (defining current year business
2 credit) is amended by striking “plus” at the end of para-
3 graph (11), by striking the period at the end of paragraph
4 (12) and inserting “, plus”, and by adding at the end the
5 following new paragraph:

6 “(13) the employee training credit determined
7 under section 45C(a).”

8 (c) CLERICAL AMENDMENT.—The table of sections
9 for subpart A of part IV of subchapter A of chapter 1
10 of the Internal Revenue Code of 1986 is amended by add-
11 ing at the end the following new item:

 “Sec. 45D. Employee training credit.”

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 1995.

15 **SEC. 202. PERMANENT EXTENSION OF EDUCATIONAL AS-**
16 **SISTANCE EXCLUSION.**

17 (a) IN GENERAL.—Section 127 (relating to exclusion
18 for educational assistance programs) is amended by strik-
19 ing subsection (d) and by redesignating subsection (e) as
20 subsection (d).

21 (b) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 1994.

1 **SEC. 203. DEDUCTION FOR HIGHER EDUCATION EXPENSES.**

2 (a) DEDUCTION ALLOWED.—Part VII of subchapter
3 B of chapter 1 (relating to additional itemized deductions
4 for individuals) is amended by redesignating section 220
5 as section 221 and by inserting after section 219 the fol-
6 lowing new section:

7 **“SEC. 220. HIGHER EDUCATION TUITION AND FEES; INTER-**
8 **EST ON STUDENT LOANS.**

9 “(a) ALLOWANCE OF DEDUCTION.—In the case of an
10 individual, there shall be allowed as a deduction an
11 amount equal to the sum of—

12 “(1) the qualified higher education expenses,
13 plus

14 “(2) interest on qualified higher education
15 loans, paid by the taxpayer during the taxable year.

16 “(b) QUALIFIED HIGHER EDUCATION EXPENSES.—
17 For purposes of this section—

18 “(1) QUALIFIED HIGHER EDUCATION EX-
19 PENSES.—

20 “(A) IN GENERAL.—The term ‘qualified
21 higher education expenses’ means tuition and
22 fees required for the enrollment or attendance
23 of—

24 “(i) the taxpayer,

25 “(ii) the taxpayer’s spouse, or

1 “(iii) any dependent of the taxpayer
2 with respect to whom the taxpayer is al-
3 lowed a deduction under section 151, as an
4 eligible student at an institution of higher
5 education.

6 “(B) EXCEPTION FOR EDUCATION INVOLV-
7 ING SPORTS, ETC.—Such term does not include
8 expenses with respect to any course or other
9 education involving sports, games, or hobbies
10 unless such expenses—

11 “(I) are part of a degree program, or

12 “(II) are deductible under this chap-
13 ter without regard to this section.

14 “(C) EXCEPTION FOR NONACADEMIC
15 FEES.—Such term does not include any student
16 activity fees, athletic fees, insurance expenses,
17 or other expenses unrelated to a student’s aca-
18 demic course of instruction.

19 “(D) ELIGIBLE STUDENT.—For purposes
20 of subparagraph (A), the term ‘eligible student’
21 means a student who meets the requirements of
22 section 484(a)(1) of the Higher Education Act
23 of 1965 (20 U.S.C. 1091(a)(1)).

24 “(2) DOLLAR LIMITATION.—

1 “(A) IN GENERAL.—The amount taken
2 into account under paragraph (1) for any tax-
3 able year shall not exceed \$10,000.

4 “(B) PHASE-IN.—In the case of taxable
5 years beginning in 1996, 1997, 1998, and
6 1999, the following amounts shall be sub-
7 stituted for ‘\$10,000’ in subparagraph (A):

“For taxable years beginning in:	The substitute amount is:
1996	\$2,000
1997	4,000
1998	6,000
1999	8,000.

8 “(3) LIMITATION BASED ON MODIFIED AD-
9 JUSTED GROSS INCOME.—

10 “(A) IN GENERAL.—If the modified ad-
11 justed gross income of the taxpayer for the tax-
12 able year exceeds \$70,000 (\$100,000 in the
13 case of a joint return), the amount which would
14 (but for this paragraph) be taken into account
15 under paragraph (1) shall be reduced (but not
16 below zero) by the amount which bears the
17 same ratio to the amount which would be taken
18 into account as such excess bears to \$20,000.

19 “(B) INFLATION ADJUSTMENT.—In the
20 case of any taxable year beginning in a calendar
21 year after 1996, the \$70,000 and \$100,000

1 amounts contained in subparagraph (A) shall
 2 be increased by an amount equal to—

3 “(i) such dollar amount, multiplied by

4 “(ii) the cost-of-living adjustment
 5 under section 1(f)(3) for the calendar year
 6 in which the taxable year begins, except
 7 that section 1(f)(3)(B) shall be applied by
 8 substituting ‘1995’ for ‘1992’.

9 “(C) ROUNDING.—If any amount as ad-
 10 justed under subparagraph (B) is not a mul-
 11 tiple of \$50, such amount shall be rounded to
 12 the nearest multiple of \$50 (or if such amount
 13 is a multiple of \$25, such amount shall be
 14 rounded to the next highest multiple of \$50).

15 “(D) MODIFIED ADJUSTED GROSS IN-
 16 COME.—The term ‘modified adjusted gross in-
 17 come’ means the adjusted gross income of the
 18 taxpayer for the taxable year determined—

19 “(i) without regard to this section and
 20 sections 911, 931, and 933, and

21 “(ii) after the application of sections
 22 86, 135, 219, and 469.

23 “(4) INSTITUTION OF HIGHER EDUCATION.—
 24 The term ‘institution of higher education’ means an
 25 institution which—

1 “(A) is described in section 481 of the
2 Higher Education Act of 1965 (20 U.S.C.
3 1088), and

4 “(B) is eligible to participate in programs
5 under title IV of such Act.

6 “(c) QUALIFIED HIGHER EDUCATION LOAN.—For
7 purposes of this section—

8 “(1) IN GENERAL.—The term ‘qualified higher
9 education loan’ means a loan to a student which is—

10 “(A) made, insured, or guaranteed by the
11 Federal Government,

12 “(B) made by a State or a political sub-
13 division of a State,

14 “(C) made from the proceeds of a qualified
15 student loan bond under section 144(b), or

16 “(D) made by an institution of higher edu-
17 cation (as defined in section 1201(a) of the
18 Higher Education Act of 1965 (20 U.S.C.
19 1141(a))).

20 “(2) LIMITATION.—

21 “(A) IN GENERAL.—The amount of inter-
22 est on a qualified higher education loan which
23 is taken into account under subsection (a)(2)
24 shall be reduced by the amount which bears the
25 same ratio to such amount of interest as—

1 “(i) the proceeds from such loan used
 2 for qualified higher education expenses,
 3 bears to

4 “(ii) the total proceeds from such
 5 loan.

6 “(B) QUALIFIED HIGHER EDUCATION EX-
 7 PENSES.—For purposes of subparagraph (A),
 8 the term ‘qualified higher education expenses’
 9 has the meaning given such term by subsection
 10 (b), except that—

11 “(i) such term shall include reason-
 12 able living expenses while away from home,
 13 and

14 “(ii) the limitations of paragraphs (2)
 15 and (3) of subsection (b) shall not apply.

16 “(d) COORDINATION WITH OTHER PROVISIONS.—

17 “(1) NO DOUBLE BENEFIT.—

18 “(A) IN GENERAL.—No deduction shall be
 19 allowed under subsection (a) for qualified high-
 20 er education expenses or interest on qualified
 21 higher education loans with respect to which a
 22 deduction is allowed under any other provision
 23 of this chapter.

24 “(B) SAVINGS BOND EXCLUSION.—A de-
 25 duction shall be allowed under subsection (a)(1)

1 for qualified higher education expenses only to
2 the extent the amount of such expenses exceeds
3 the amount excludable under section 135 for
4 the taxable year.

5 “(2) QUALIFIED RESIDENCE INTEREST.—If a
6 deduction is allowed under subsection (a)(2) for in-
7 terest which is also qualified residence interest under
8 section 163(h), such interest shall not be taken into
9 account under section 163(h).

10 “(e) SPECIAL RULES.—

11 “(1) ELECTION.—If a deduction is allowable
12 under more than one provision of this chapter with
13 respect to qualified higher education expenses, the
14 taxpayer may elect the provision under which the de-
15 duction is allowed.

16 “(2) LIMITATION ON TAXABLE YEAR OF DE-
17 DUCTION.—

18 “(A) IN GENERAL.—A deduction shall be
19 allowed under subsection (a)(1) for any taxable
20 year only to the extent the qualified higher edu-
21 cation expenses are in connection with attend-
22 ance at an institution of higher education dur-
23 ing the taxable year.

24 “(B) CERTAIN PREPAYMENTS ALLOWED.—

25 Subparagraph (A) shall not apply to qualified

1 higher education expenses paid during a taxable
2 year which are in connection with attendance at
3 an institution of higher education which begins
4 during the first 2 months of the following tax-
5 able year.

6 “(3) ADJUSTMENT FOR CERTAIN SCHOLAR-
7 SHIPS AND VETERANS’ BENEFITS.—The amount of
8 qualified higher education expenses otherwise taken
9 into account under subsection (a)(1) with respect to
10 the education of an individual shall be reduced (be-
11 fore the application of subsection (b)) by the sum of
12 the amounts received with respect to such individual
13 for the taxable year as—

14 “(A) a qualified scholarship which under
15 section 117 is not includable in gross income,

16 “(B) an educational assistance allowance
17 under chapter 30, 31, 32, 34, or 35 of title 38,
18 United States Code, or

19 “(C) a payment (other than a gift, be-
20 quest, devise, or inheritance within the meaning
21 of section 102(a)) for educational expenses, or
22 attributable to attendance at an eligible edu-
23 cational institution, which is exempt from in-
24 come taxation by any law of the United States.

1 “(4) NO DEDUCTION FOR MARRIED INDIVID-
 2 UALS FILING SEPARATE RETURNS.—If the taxpayer
 3 is a married individual (within the meaning of sec-
 4 tion 7703), this section shall apply only if the tax-
 5 payer and his spouse file a joint return for the tax-
 6 able year.

7 “(5) REGULATIONS.—The Secretary may pre-
 8 scribe such regulations as may be necessary or ap-
 9 propriate to carry out this section, including regula-
 10 tions requiring recordkeeping and information re-
 11 porting.”

12 (b) DEDUCTION ALLOWED IN COMPUTING AD-
 13 JUSTED GROSS INCOME.—Section 62(a) is amended by in-
 14 serting after paragraph (15) the following new paragraph:

15 “(16) HIGHER EDUCATION TUITION AND
 16 FEES.—The deduction allowed by section 219.”

17 (c) CONFORMING AMENDMENT.—The table of sec-
 18 tions for part VII of subchapter B of chapter 1 is amended
 19 by striking the item relating to section 220 and inserting:

“Sec. 220. Higher education tuition and fees.
 “Sec. 221. Cross reference.”

20 (d) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to taxable years beginning after
 22 December 31, 1995.

1 **TITLE III—HIGH-WAGE JOBS FOR**
 2 **AMERICAN FAMILIES**

3 **Subtitle A—Business Incentives**

4 **SEC. 301. EXCLUSION FOR GAIN FROM SMALL BUSINESS**
 5 **STOCK.**

6 (a) INCREASE IN EXCLUSION FOR CRITICAL TECH-
 7 NOLOGIES SMALL BUSINESS STOCK HELD MORE THAN
 8 TEN YEARS.—

9 (1) IN GENERAL.—Subsection (a) of section
 10 1202 (relating to exclusion for gain from certain
 11 small business stock) is amended to read as follows:

12 “(a) EXCLUSION.—In the case of a taxpayer other
 13 than a corporation, gross income shall not include the sum
 14 of—

15 “(1) 50 percent of any gain from the sale or ex-
 16 change of qualified small business stock which is
 17 held for more than 5 years and to which paragraph
 18 (2) does not apply, plus

19 “(2) 100 percent of any gain from the sale or
 20 exchange of qualified small business stock—

21 “(A) which is held for more than 10 years,
 22 and

23 “(B) substantially all of the active business
 24 activities of which during substantially all of the
 25 taxpayer’s holding period for such stock are in

1 connection with critical technologies (as defined
 2 in section 2491(6) of title 10, United States
 3 Code) or with environmental technologies for
 4 pollution minimization, remediation, or waste
 5 management.”

6 (2) CONFORMING AMENDMENTS.—Each of the
 7 following provisions are amended by striking “50-
 8 Percent”:

9 (A) The heading for section 1202.

10 (B) The heading for section 1202(a).

11 (C) The item relating to section 1202 in
 12 the table of sections for part I of subchapter P
 13 of chapter 1.

14 (b) EXCLUSION LIMITED TO STOCK IN COMPANIES
 15 CREATING AMERICAN JOBS.—Section 1202(c) (defining
 16 qualified small business stock) is amended by adding at
 17 the end the following new paragraph:

18 “(4) UNITED STATES JOB REQUIREMENT.—
 19 Stock in a corporation shall not be treated as quali-
 20 fied small business stock unless, during substantially
 21 all of the taxpayer’s holding period after December
 22 31, 1996, at least 75 percent of employees hired
 23 after such date perform substantially all of their
 24 services for the corporation within the United
 25 States.”

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section apply to sales or exchanges after December
 3 31, 1995, in taxable years ending after such date.

4 **SEC. 302. PERMANENT EXTENSION OF RESEARCH CREDIT.**

5 (a) IN GENERAL.—Section 41 of the Internal Reve-
 6 nue Code of 1986 (relating to credit for research activi-
 7 ties) is amended by striking subsection (h).

8 (b) CONFORMING AMENDMENT.—Section 28(b)(1) of
 9 the Internal Revenue Code of 1986 is amended by striking
 10 subparagraph (D).

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to taxable years ending after June
 13 30, 1995.

14 **Subtitle B—Preservation of**
 15 **American Jobs**

16 **SEC. 311. TAXATION OF INCOME OF CONTROLLED FOREIGN**
 17 **CORPORATIONS ATTRIBUTABLE TO IM-**
 18 **PORTED PROPERTY.**

19 (a) GENERAL RULE.—Subsection (a) of section 954
 20 (defining foreign base company income) is amended by
 21 striking “and” at the end of paragraph (4), by striking
 22 the period at the end of paragraph (5) and inserting “,
 23 and”, and by adding at the end the following new para-
 24 graph:

1 “(6) imported property income for the taxable
 2 year (determined under subsection (h) and reduced
 3 as provided in subsection (b)(5)).”

4 (b) DEFINITION OF IMPORTED PROPERTY IN-
 5 COME.—Section 954 is amended by adding at the end the
 6 following new subsection:

7 “(h) IMPORTED PROPERTY INCOME.—

8 “(1) IN GENERAL.—For purposes of subsection
 9 (a)(6), the term ‘imported property income’ means
 10 income (whether in the form of profits, commissions,
 11 fees, or otherwise) derived in connection with—

12 “(A) manufacturing, producing, growing,
 13 or extracting imported property,

14 “(B) the sale, exchange, or other disposi-
 15 tion of imported property, or

16 “(C) the lease, rental, or licensing of im-
 17 ported property.

18 Such term shall not include any foreign oil and gas
 19 extraction income (within the meaning of section
 20 907(c)) or any foreign oil related income (within the
 21 meaning of section 907(c)).

22 “(2) IMPORTED PROPERTY.—For purposes of
 23 this subsection—

24 “(A) IN GENERAL.—Except as otherwise
 25 provided in this paragraph, the term ‘imported

property’ means property which is imported into the United States by the controlled foreign corporation or a related person.

“(B) IMPORTED PROPERTY INCLUDES CERTAIN PROPERTY IMPORTED BY UNRELATED PERSONS.—The term ‘imported property’ includes any property imported into the United States by an unrelated person if, when such property was sold to the unrelated person by the controlled foreign corporation (or a related person), it was reasonable to expect that—

“(i) such property would be imported into the United States, or

“(ii) such property would be used as a component in other property which would be imported into the United States.

“(C) EXCEPTION FOR PROPERTY SUBSEQUENTLY EXPORTED.—The term ‘imported property’ does not include any property which is imported into the United States and which—

“(i) before substantial use in the United States, is sold, leased, or rented by the controlled foreign corporation or a related person for direct use, consumption, or disposition outside the United States, or

1 “(ii) is used by the controlled foreign
 2 corporation or a related person as a com-
 3 ponent in other property which is so sold,
 4 leased, or rented.

5 “(3) DEFINITIONS AND SPECIAL RULES.—

6 “(A) IMPORT.—For purposes of this sub-
 7 section, the term ‘import’ means entering, or
 8 withdrawal from warehouse, for consumption or
 9 use. Such term includes any grant of the right
 10 to use an intangible (as defined in section
 11 936(b)(3)(B)) in the United States.

12 “(B) UNRELATED PERSON.—For purposes
 13 of this subsection, the term ‘unrelated person’
 14 means any person who is not a related person
 15 with respect to the controlled foreign corpora-
 16 tion.

17 “(C) COORDINATION WITH FOREIGN BASE
 18 COMPANY SALES INCOME.—For purposes of this
 19 section, the term ‘foreign base company sales
 20 income’ shall not include any imported property
 21 income.”

22 (c) SEPARATE APPLICATION OF LIMITATIONS ON
 23 FOREIGN TAX CREDIT FOR IMPORTED PROPERTY IN-
 24 COME.—

1 (1) IN GENERAL.—Paragraph (1) of section
 2 904(d) (relating to separate application of section
 3 with respect to certain categories of income) is
 4 amended by striking “and” at the end of subpara-
 5 graph (H), by redesignating subparagraph (I) as
 6 subparagraph (J), and by inserting after subpara-
 7 graph (H) the following new subparagraph:

8 “(I) imported property income, and”.

9 (2) IMPORTED PROPERTY INCOME DEFINED.—
 10 Paragraph (2) of section 904(d) is amended by re-
 11 designating subparagraphs (H) and (I) as subpara-
 12 graphs (I) and (J), respectively, and by inserting
 13 after subparagraph (G) the following new subpara-
 14 graph:

15 “(H) IMPORTED PROPERTY INCOME.—The
 16 term ‘imported property income’ means any in-
 17 come received or accrued by any person which
 18 is of a kind which would be imported property
 19 income (as defined in section 954(h)).”

20 (3) LOOK-THRU RULES TO APPLY.—Clause (i)
 21 of section 904(d)(3)(F) is amended by striking “or
 22 (E)” and inserting “(E), or (H)”.

23 (d) TECHNICAL AMENDMENTS.—

24 (1) Clause (iii) of section 952(c)(1)(B) (relating
 25 to certain prior year deficits may be taken into ac-

1 count) is amended by inserting the following sub-
2 clause after subclause (II) (and by redesignating the
3 following subclauses accordingly):

4 “(III) imported property in-
5 come,”.

6 (2) Paragraph (5) of section 954(b) of such
7 Code (relating to deductions to be taken into ac-
8 count) is amended by striking “and the foreign base
9 company oil related income” and inserting “the for-
10 eign base company oil related income, and the im-
11 ported property income”.

12 (e) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the amendments made by this section
15 shall apply to taxable years of foreign corporations
16 beginning after December 31, 1994, and to taxable
17 years of United States shareholders within which or
18 with which such taxable years of such foreign cor-
19 porations end.

20 (2) SUBSECTION (c).—The amendments made
21 by subsection (c) shall apply to taxable years begin-
22 ning after December 31, 1994.

1 **SEC. 312. DEBARMENT OF FEDERAL CONTRACTORS NOT IN**
2 **COMPLIANCE WITH IMMIGRATION AND NA-**
3 **TIONALITY ACT EMPLOYMENT PROVISIONS.**

4 (a) **POLICY.**—It is the policy of the United States
5 that—

6 (1) the heads of executive agencies in procuring
7 goods and services should not contract with an em-
8 ployer that has not complied with paragraphs (1)(A)
9 and (2) of section 274A(a) of the Immigration and
10 Nationality Act (8 U.S.C. 1324a(a)) (hereafter in
11 this section referred to as the “INA employment
12 provisions”), which prohibit unlawful employment of
13 aliens; and

14 (2) the Attorney General should fully and ag-
15 gressively enforce the antidiscrimination provisions
16 of the Immigration and Nationality Act.

17 (b) **ENFORCEMENT.**—

18 (1) **AUTHORITY.**—

19 (A) **IN GENERAL.**— Using the procedures
20 established pursuant to section 274A(e) of the
21 Immigration and Nationality Act (8 U.S.C.
22 1324a(e)), the Attorney General may conduct
23 such investigations as are necessary to deter-
24 mine whether a contractor or an organizational
25 unit of a contractor is not complying with the
26 INA employment provisions.

1 (B) COMPLAINTS AND HEARINGS.—The
2 Attorney General—

3 (i) shall receive and may investigate
4 any complaint by an employee of any such
5 entity that alleges noncompliance by such
6 entity with the INA employment provi-
7 sions; and

8 (ii) in conducting the investigation,
9 shall hold such hearings as are necessary
10 to determine whether that entity is not in
11 compliance with the INA employment pro-
12 visions.

13 (2) ACTIONS ON DETERMINATIONS OF NON-
14 COMPLIANCE.—

15 (A) ATTORNEY GENERAL.—Whenever the
16 Attorney General determines that a contractor
17 or an organizational unit of a contractor is not
18 in compliance with the INA employment provi-
19 sions, the Attorney General shall transmit that
20 determination to the head of each executive
21 agency that contracts with the contractor and
22 the heads of other executive agencies that the
23 Attorney General determines it appropriate to
24 notify.

1 (B) HEAD OF CONTRACTING AGENCY.—

2 Upon receipt of the determination, the head of
3 a contracting executive agency shall consider
4 the contractor or an organizational unit of the
5 contractor for debarment, and shall take such
6 other action as may be appropriate, in accord-
7 ance with applicable procedures and standards
8 set forth in the Federal Acquisition Regulation.

9 (C) NONREVIEWABILITY OF DETERMINA-
10 TION.—The Attorney General's determination is
11 not reviewable in debarment proceedings.

12 (c) DEBARMENT.—

13 (1) AUTHORITY.—The head of an executive
14 agency may debar a contractor or an organizational
15 unit of a contractor on the basis of a determination
16 of the Attorney General that it is not in compliance
17 with the INA employment provisions.

18 (2) SCOPE.—The scope of the debarment gen-
19 erally should be limited to those organizational units
20 of a contractor that the Attorney General determines
21 are not in compliance with the INA employment pro-
22 visions.

23 (3) PERIOD.—The period of a debarment under
24 this subsection shall be one year, except that the
25 head of the executive agency may extend the debar-

1 ment for additional periods of one year each if,
2 using the procedures established pursuant to section
3 274A(e) of the Immigration and Nationality Act (8
4 U.S.C. 1324a(e)), the Attorney General determines
5 that the organizational unit of the contractor con-
6 cerned continues not to comply with the INA em-
7 ployment provisions.

8 (4) LISTING.—The Administrator of General
9 Services shall list each debarred contractor and each
10 debarred organizational unit of a contractor on the
11 List of Parties Excluded from Federal Procurement
12 and Nonprocurement Programs that is maintained
13 by the Administrator. No debarred contractor and
14 no debarred organizational unit of a contractor shall
15 be eligible to participate in any procurement, nor in
16 any nonprocurement activities, of the Federal Gov-
17 ernment.

18 (d) REGULATIONS AND ORDERS.—

19 (1) ATTORNEY GENERAL.—

20 (A) AUTHORITY.—The Attorney General
21 may prescribe such regulations and issue such
22 orders as the Attorney General considers nec-
23 essary to carry out the responsibilities of the
24 Attorney General under this section.

1 (B) CONSULTATION.—In proposing regula-
2 tions or orders that affect the executive agen-
3 cies, the Attorney General shall consult with the
4 Secretary of Defense, the Secretary of Labor,
5 the Administrator of General Services, the Ad-
6 ministrator of the National Aeronautics and
7 Space Administration, the Administrator for
8 Federal Procurement Policy, and the heads of
9 any other executive agencies that the Attorney
10 General considers appropriate.

11 (2) FEDERAL ACQUISITION REGULATION.—The
12 Federal Acquisition Regulatory Council shall amend
13 the Federal Acquisition Regulation to the extent
14 necessary to provide for implementation of the de-
15 barment responsibility and other related responsibil-
16 ities assigned to heads of executive agencies under
17 this section.

18 (e) INTERAGENCY COOPERATION.—The head of each
19 executive agency shall cooperate with, and provide such
20 information and assistance to, the Attorney General as is
21 necessary for the Attorney General to perform the duties
22 of the Attorney General under this section.

23 (f) DELEGATION.—The Attorney General, the Sec-
24 retary of Defense, the Administrator of General Services,
25 the Administrator of the National Aeronautics and Space

1 Administration, and the head of any other executive agen-
 2 cy may delegate the performance of any of the functions
 3 or duties of that official under this section to any officer
 4 or employee of the executive agency under the jurisdiction
 5 of that official.

6 (g) IMPLEMENTATION NOT TO BURDEN PROCUREMENT
 7 PROCESS EXCESSIVELY.—This section shall be im-
 8 plemented in a manner that least burdens the procure-
 9 ment process of the Federal Government.

10 (h) CONSTRUCTION.—

11 (1) ANTIDISCRIMINATION.—Nothing in this sec-
 12 tion relieves employers of the obligation to avoid un-
 13 fair immigration-related employment practices as re-
 14 quired by—

15 (A) the antidiscrimination provisions of
 16 section 274B of the Immigration and National-
 17 ity Act (8 U.S.C. 1324b), including the provi-
 18 sions of subsection (a)(6) of that section con-
 19 cerning the treatment of certain documentary
 20 practices as unfair immigration-related employ-
 21 ment practices; and

22 (B) all other antidiscrimination require-
 23 ments of applicable law.

24 (2) CONTRACT TERMS.—This section neither
 25 authorizes nor requires any additional certification

1 provision, clause, or requirement to be included in
2 any contract or contract solicitation.

3 (3) NO NEW RIGHTS AND BENEFITS.—This sec-
4 tion may not be construed to create any right or
5 benefit, substantive or procedural, enforceable at law
6 by a party against the United States, including any
7 department or agency, officer, or employee of the
8 United States.

9 (4) JUDICIAL REVIEW.—This section does not
10 preclude judicial review of a final agency decision in
11 accordance with chapter 7 of title 5, United States
12 Code.

13 (i) DEFINITIONS.—In this section:

14 (1) EXECUTIVE AGENCY.—The term “executive
15 agency” has the meaning given that term in section
16 4 of the Office of Federal Procurement Policy Act
17 (41 U.S.C. 403).

18 (2) CONTRACTOR.—The term “contractor”
19 means any individual or other legal entity that—

20 (A) directly or indirectly (through an affili-
21 ate or otherwise), submits offers for or is
22 awarded, or reasonably may be expected to sub-
23 mit offers for or be awarded, a Federal Govern-
24 ment contract, including a contract for carriage
25 under Federal Government or commercial bills

1 of lading, or a subcontract under a Federal
2 Government contract; or

3 (B) conducts business, or reasonably may
4 be expected to conduct business, with the Fed-
5 eral Government as an agent or representative
6 of another contractor.

7 **SEC. 313. SENSE OF CONGRESS RELATING TO STOCK OP-**
8 **TIONS FOR EMPLOYEES WHO ARE LAID OFF.**

9 (a) FINDINGS.—The Congress finds that—

10 (1) the rationale behind many corporate
11 downsizings is to increase earnings and thereby in-
12 crease the value of the stock of the corporation,

13 (2) corporate managers have ample experience
14 in granting stock incentives to themselves, and

15 (3) employees who are laid off in the corporate
16 downsizings should benefit from the increase in
17 value of corporate stock attributable to their losing
18 their jobs.

19 (b) SENSE OF CONGRESS.—It is the sense of the
20 Congress that employees who are laid off in a corporate
21 downsizing should be given stock options at the time of
22 their termination which may be exercised at a price equal
23 to the value of the stock on the day before the downsizing
24 is announced.

1 **Subtitle C—Promotion of Long-**
2 **Term Investments in American**
3 **Businesses**

4 **PART I—LONG-TERM INVESTMENT, COMPETI-**
5 **TIVENESS, PENSION PROTECTION, AND COR-**
6 **PORATE TAKEOVER REFORM**

7 **SEC. 321. FINDINGS.**

8 The Congress makes the following findings:

9 (1) Managers of American corporations have
10 been criticized for their short-term focus, leading to
11 a lack of investment in research and development,
12 and plants and equipment that are necessary to
13 maintain our competitive position worldwide.

14 (2) The short-term horizon of our corporate
15 managers can be traced, in part, to changes in the
16 capital markets away from ownership by individuals
17 to ownership by large pension funds and institu-
18 tional investors, and in part to threats of hostile
19 takeovers.

20 (3) Pension funds, with assets of almost
21 \$2,000,000,000,000, and institutional investors are
22 playing an ever increasing role in the country's eco-
23 nomic system, with estimates that by the year 2000,
24 as much as two-thirds of all corporate equities will
25 be held by pension funds. The pressure on such pen-

1 sion fund managers and other institutional investors
2 to perform better than the market and the high
3 turnover rate in some pension funds has raised con-
4 cerns that the accumulation of large blocks of stock
5 in fewer hands may be contributing to the number
6 of mergers and acquisitions and to a shorter term
7 focus on the part of management.

8 (4) The surplus assets in many company pen-
9 sion plans have too often become tools in the financ-
10 ing of takeovers and leveraged buy outs, a practice
11 which placed the pensions of workers at an unac-
12 ceptable risk.

13 (5) Too little emphasis has been placed on en-
14 suring the fair treatment and job security of workers
15 following a takeover or leveraged buy out.

16 (6) On an aggregate basis, corporate takeovers
17 and leveraged buy outs have been a factor in an
18 enormous increase in corporate debt. Debt for non-
19 financial businesses rose from \$500,000,000,000 in
20 1970 to \$3,100,000,000,000 by the end of the third
21 quarter of 1988, a more than sixfold increase. In ad-
22 dition, for the period 1984 through the third quarter
23 of 1988, a total of \$794,000,000,000 of corporate
24 debt has been added, while a total of

1 \$422,300,000,000 of corporate equity has been with-
2 drawn.

3 (7) The large amount of debt incurred by cor-
4 porations either as a result of, or to stave off, take-
5 overs or leveraged buy outs has resulted in a de-
6 crease in research and development budgets and
7 needed investments in plant improvements and
8 equipment at a time when United States industry is
9 struggling to maintain its international competitive-
10 ness.

11 (8) Long-term investment and planning are es-
12 sential to sustained economic growth, yet numerous
13 economic factors are pushing corporate managers
14 and investors to take an increasingly short-term
15 view.

16 (9) The integrity of our financial markets and
17 the confidence of the public in them have been un-
18 dermined by the conduct of parties in tenders offers
19 and leveraged buy outs.

20 (10) Therefore, in order to protect the public
21 interest, it is necessary to correct inadequacies in,
22 and curb abuses of, our existing securities laws.

1 **SEC. 322. LONG-TERM INVESTMENTS AND PENSION PRO-**
 2 **TECTION.**

3 (a) ANTICHURNING RULE.—Section 406(a)(1) of the
 4 Employee Retirement Income Security Act of 1974 (29
 5 U.S.C. 1106(a)(1)) is amended—

6 (1) by striking “or” at the end of subparagraph
 7 (D),

8 (2) by striking the period at the end of sub-
 9 paragraph (E) and inserting a semicolon, and

10 (3) by adding at the end the following new sub-
 11 paragraph:

12 “(F) sale or disposition of—

13 “(i) stock or securities (as defined in
 14 section 29(a)(36) of the Investment Com-
 15 pany Act of 1940), or

16 “(ii) options, futures, or forward con-
 17 tracts, which were held for less than 3
 18 months unless less than 30 percent of such
 19 plan’s gross income for the fiscal year is
 20 derived from such sale or disposition.”

21 (b) ERISA AMENDMENTS.—

22 (1) Section 404 of the Employee Retirement In-
 23 come Security Act of 1974 (29 U.S.C. 1104) is
 24 amended by adding at the end the following:

25 “(d) In voting on a merger, combination, or sale of
 26 substantially all the assets of, or in tendering or refraining

1 from tendering securities in a tender offer for, a publicly
 2 owned business the securities of which constitute assets
 3 of a plan, a fiduciary shall take into consideration the
 4 long-term as well as the short-term interests of the partici-
 5 pants and beneficiaries of the plan and shall not be
 6 deemed to have violated this part solely because the fidu-
 7 ciary takes such interests into consideration.”

8 (2) Section 4044 of such Act (29 U.S.C. 1344)
 9 is amended by adding at the end the following new
 10 subsection:

11 “(e)(1) Notwithstanding subsection (d)(1), a dis-
 12 tribution otherwise permitted pursuant to such subsection
 13 shall be prohibited for a period of 5 years following:

14 “(A) any acquisition of the securities of the em-
 15 ployer pursuant to a tender offer subject to section
 16 14(d) of the Securities Exchange Act of 1934 (15
 17 U.S.C. 78n(d)) by any person, or

18 “(B) any acquisition of the securities of the em-
 19 ployer in a transaction to which section 13(e) of
 20 such Act (15 U.S.C. 78m(e)) applies;

21 “(2) Notwithstanding subsection (d)(1) and subject
 22 to paragraph (3), a distribution otherwise permitted pur-
 23 suant to such subsection shall be prohibited if any part
 24 of the residual assets of the plan are used to finance, di-
 25 rectly or indirectly—

1 “(A) any acquisition of the securities of the em-
2 ployer pursuant to a tender offer subject to section
3 14(d) of the Securities Exchange Act of 1934 (15
4 U.S.C. 78n(d)) by any person, or

5 “(B) any acquisition of the securities of the em-
6 ployer in a transaction to which section 123(e) of
7 such Act (15 U.S.C. 78m(e)) applies,
8 including the repayment, redemption, or refinancing of
9 any indebtedness incurred by such person in connection
10 with any such acquisitions.

11 “(3) Paragraph (1) does not apply to a transaction
12 described in section 4980(c)(3) of the International Reve-
13 nue Code of 1986 (as in effect on the date of enactment
14 of this subsection) if—

15 “(A) the transfer of assets to the plan is ap-
16 proved by a majority vote of all participants of the
17 employer plan;

18 “(B) prior to the vote, there is disclosure to the
19 participants of all material facts concerning the
20 transfer of assets to the plan and the acquisition of
21 employer securities by the plan, including—

22 “(i) the terms of the employee stock own-
23 ership plan,

24 “(ii) the terms of the plan from which the
25 assets are being transferred, and

1 “(iii) whether or not a new plan will be es-
 2 tablished in place of the plan from which the
 3 assets are being transferred; and

4 “(C) the vote by the participants is confidential,
 5 and takes place within a reasonable period of time
 6 following the disclosure required under subpara-
 7 graph (B).

8 **SEC. 323. PROTECTION OF WORKERS.**

9 Section 14(d) of the Securities Exchange Act of 1934
 10 (15 U.S.C. 78n(d)) is amended by adding at the end the
 11 following:

12 “()(A) Any person who acquires ownership or
 13 control of any plant, facility, or other property of an
 14 issuer, either directly in his own name or indirectly,
 15 through a transaction in response, or otherwise re-
 16 lated, to the filing of a statement under section
 17 13(d) of this title announcing an intent to seek a
 18 change in control of the issuer or a statement under
 19 this section announcing a tender offer for the issu-
 20 er’s securities shall have the following minimum
 21 statutory obligations to the employees of the plant,
 22 facility or property who are, at the time the trans-
 23 action is consummated, covered by a collective bar-
 24 gaining agreement (the ‘preacquisition agreement’):

1 “(i) If the acquiring person uses the plant,
2 facility, or property in a manner which is not
3 fundamentally different from its preacquisition
4 use, the person—

5 “(I) shall abide by the terms of the
6 preacquisition agreement, regardless of its
7 expiration date, for a period of 180 days
8 after the date the acquirer commences op-
9 erations at the plant, facility or property;
10 and

11 “(II) shall, if the preacquisition agree-
12 ment was not due to expire within one year
13 of the date of the consummation of the ac-
14 quisition transaction, negotiate in good
15 faith with the employees’ exclusive bargain-
16 ing representative for a collective bargain-
17 ing agreement covering the unexpired term
18 of the preacquisition agreement and shall
19 submit to binding arbitration on all unre-
20 solved issues if the parties are unable,
21 within 120 days of the acquisition, to nego-
22 tiate a new agreement.

23 “(ii) If the acquiring person uses the plant,
24 facility or property in a manner which is fun-
25 damentally different from its preacquisition use,

1 the acquirer shall provide to any employee, who
2 was covered by the preacquisition agreement
3 and whose employment is involuntarily termi-
4 nated by reason of the acquisition transaction,
5 severance pay in an amount equal to six times
6 his monthly compensation at the time of termi-
7 nation.

8 “(B) In the event of arbitration of unresolved
9 issues pursuant to subparagraph (A)(i)(II), the par-
10 ties shall select an arbitrator from a special roster
11 of arbitrators prepared by an appropriate agency of
12 the Federal Government which engages in the medi-
13 ation and conciliation of labor-management disputes
14 in the industry designated by the Secretary of Labor
15 and the arbitrator shall within the 180-day period
16 stated in subparagraph (a)(i)(I) issue a final and
17 binding award on all unresolved issues, based upon
18 the acquiring person’s experience under the terms of
19 the preacquisition agreement and on collective bar-
20 gaining agreements covering comparable plants, fa-
21 cilities and properties.

22 “(C) For purposes of this paragraph—

23 “(i) the property of an issuer includes
24 property owned by an entity controlled by the
25 issuer;

1 “(ii) the obligations created herein apply to
 2 each succeeding transferee of the issuer’s prop-
 3 erty in the same manner as to the original
 4 acquirer of the property by reason of a trans-
 5 action covered by subparagraph (A); and

6 “(iii) any condition, stipulation, or provi-
 7 sion in any contract purporting to waive the
 8 rights and obligations created in this section
 9 shall be void.

10 “(D) Any person seeking to enforce the rights
 11 and obligations created by this section may sue at
 12 law or in equity in any court of competent jurisdic-
 13 tion. In any suit under this subsection, the court
 14 may, in its discretion, assess reasonable costs, in-
 15 cluding attorneys’ fees in favor of the prevailing
 16 party.”

17 **SEC. 324. WILLIAMS ACT REFORMS.**

18 (a) 10-DAY WINDOW.—Section 13(d)(1) of the Secu-
 19 rities Exchange Act of 1934 (15 U.S.C. 78m(d)(1)) is
 20 amended—

21 (1) by striking “shall, within ten days after
 22 such acquisition” and inserting “shall, within 5 days
 23 after such acquisition”;

1 (2) by inserting after “send to each exchange”
2 the following: “and registered national securities as-
3 sociation”; and

4 (3) by adding at the end the following: “Any
5 person required to send and file such a statement
6 may not acquire or agree to acquire, directly or indi-
7 rectly, the beneficial ownership of any additional
8 amount of such equity securities after the trans-
9 action that required such person to send and file
10 such statement until after such statement has been
11 filed with the Commission.”

12 (b) TENDER OFFERS.—Section 14(d) of the Securi-
13 ties Exchange Act of 1934 (15 U.S.C. 78n(d)) is amend-
14 ed—

15 (1) by redesignating paragraphs (2) through
16 (8) as paragraphs (6) through (12), and

17 (2) by inserting after paragraph (1) the follow-
18 ing new paragraphs:

19 “(2) Any person making a tender offer for or a re-
20 quest or invitation for tender offers of any class of any
21 such equity security shall hold such offer, request, or invi-
22 tation open for a period of at least forty-five business days
23 from the date on which such offer, request, or invitation
24 is first published, sent, or given to security holders, or

1 such longer period as the Commission may, by rule, pre-
2 scribe.

3 “(3) In the case of a well-financed offer, the preced-
4 ing sentence shall be applied by substituting ‘thirty’ for
5 ‘forty-five’. For the purpose of the preceding sentence, a
6 well-financed offer is an offer that would not, if con-
7 summated, constitute a highly leveraged transaction as de-
8 fined by the appropriate regulatory agencies (other than
9 the Commission).

10 “(4)(A) If, during the forty-five-day period described
11 in paragraph (2), a qualified employee stock ownership
12 plan notifies the offeror, the issuer, or the Commission,
13 of the plan’s intent to acquire additional securities of the
14 issuer on terms which are substantially equivalent to other
15 offers, paragraph (2) shall be applied by substituting
16 ‘ninety-five’ for ‘forty-five’.

17 “(B) For purposes of this subsection, the term ‘quali-
18 fied employee stock ownership plan’ means an employee
19 stock ownership plan defined in section 4975(e)(7) of the
20 Internal Revenue Code of 1986 which—

21 “(i) is sponsored by the issuer (or a member of
22 the controlled group) of the equity securities to
23 which the request or invitation for tenders described
24 in paragraph (1) is made,

1 “(ii) meets the requirements of section 410(b)
2 of the Internal Revenue Code of 1986, and

3 “(iii) owns securities of the issuer representing
4 at least 5 per centum of the outstanding voting se-
5 curities (of the issuer) on the day on which the
6 forty-five-day period begins to run and has held such
7 5 per centum for a period beginning at least six
8 months before such forty-five-day period begins to
9 run.

10 “(C) The provisions of this paragraph shall not apply
11 to any acquisition or proposed acquisition of a security
12 if—

13 “(i) the acquisition of such security, together
14 with all other acquisitions by the same person of se-
15 curities of the same class during the preceding 12
16 months, would not exceed 2 per centum of that
17 class;

18 “(ii) a block of 10 per centum or more of the
19 outstanding shares is acquired and such shares were
20 held by the seller for at least 2 years prior to the
21 sale;

22 “(iii) such acquisition is from one family mem-
23 ber to another;

1 “(iv) such acquisition is made by a person who
2 owned more than 50 per centum of the outstanding
3 shares prior to such purchase; or

4 “(v) the Commission, by rule or regulation, or
5 by order, has exempted such acquisition from the
6 provisions of this subsection as it determines to be
7 necessary or appropriate and consistent with the
8 public interest, the protection of investors, and the
9 purposes of this paragraph.”

10 (c) CONFORMING AMENDMENT.—Section 14 of the
11 Securities Exchange Act of 1934 (15 U.S.C. 78n) is
12 amended by striking the heading of such section and in-
13 serting the following:

14 “PROXIES AND TENDER OFFERS”.

15 **SEC. 325. ANTI-GREENMAIL/SHORT-SWING PROFITS.**

16 Section 16 of the Securities Exchange Act of 1934
17 (15 U.S.C. 78p) is amended—

18 (1) in the caption, by striking “**AND PRIN-**
19 **CIPAL STOCKHOLDERS**” and inserting “**PRIN-**
20 **CIPAL STOCKHOLDERS AND HOLDERS OF**
21 **MORE THAN 5 PER CENTUM**”;

22 (2) in subsection (b)—

23 (A) by inserting “(1)(A)” after “(b)”; and

24 (B) by striking “Suit” and all that follows
25 through the end period and inserting the follow-
26 ing:

1 “(B) For the purpose of discouraging manipulative
2 tender offer practices, any profit realized by any person
3 from any disposition, directly or indirectly, of equity secu-
4 rities described in section 13(d)(1), shall inure to and be
5 recoverable by the issuer of such securities, if such person,
6 (i) was the beneficial owner, at the time of such disposi-
7 tion, of more than 5 per centum of the class of securities
8 so disposed of, (ii) made a tender offer for such securities
9 within 6 months preceding the disposition, and (iii) had
10 held any or all of such securities for less than six months
11 prior to the disposition thereof. The preceding sentence
12 does not apply if (I) such disposition was a purchase by
13 the issuer of the securities and has been approved by the
14 affirmative vote of a majority of the aggregate outstanding
15 voting securities of the issuer, or (II) the same offer to
16 purchase is made available to all shareholders.

17 “(2) Suit to recover such profit may be instituted at
18 law or in equity in any court of competent jurisdiction by
19 the issuer, or by the owner of any security of the issuer
20 in the name and in behalf of the issuer if the issuer shall
21 fail or refuse to bring such suit within 60 days after re-
22 quest or shall fail diligently to prosecute the same there-
23 after; but no such suit shall be brought more than 2 years
24 after the date such profit was realized. This subsection
25 shall not be construed to cover any transaction where such

1 beneficial owner was not such both at the time of the pur-
2 chase and sale, or the sale and purchase, of the security
3 involved, or any transaction or transactions which the
4 Commission by rules and regulations may exempt as not
5 comprehended within the purpose of this subsection.

6 “(3) The Commission shall, by rule, regulation, or by
7 order upon application, conditionally or unconditionally
8 exempt any person, security, or transaction from any or
9 all of the provisions of paragraph (1)(B) as it determines
10 to be necessary or appropriate and consistent with the
11 public interest, the protection of investors, and the pur-
12 poses of this subsection.”

13 **SEC. 326. ADDITIONAL RESERVE REQUIREMENTS.**

14 (a) IN GENERAL.—Each appropriate Federal bank-
15 ing agency shall review the exposure to risk of United
16 States depository institutions arising from the medium-
17 and long-term loans made by such institutions that are
18 outstanding in connection with highly leveraged trans-
19 actions, as defined by the appropriate Federal banking
20 agency. Each agency shall provide directions to such insti-
21 tutions regarding additions to general reserves, if the
22 agency determines that such additions to general reserves
23 are necessary to protect the safety and soundness of the
24 institution, based on a determination by the agency that

1 such institution's loans with respect to highly leveraged
2 transactions are unduly concentrated.

3 (b) DETERMINATION OF INSTITUTIONAL EXPOSURE
4 TO RISK.—In determining the exposure of an institution
5 to risk for purposes of subsection (a), the appropriate Fed-
6 eral banking agency—

7 (1) may exempt, in full or in part, from reserve
8 requirements established pursuant to subsection (a),
9 any loan that is secured, in whole or in part, by ap-
10 propriate collateral for payment of interest or prin-
11 cipal; and

12 (2) take into account any other factors which
13 bear on such exposure and the particular cir-
14 cumstances of the institution.

15 (c) TIMING AND REPORT.—

16 (1) DETERMINED BY AGENCY.—Except as pro-
17 vided in paragraph (3), each appropriate Federal
18 banking agency shall determine the timing of any
19 addition to reserves required by subsection (a).

20 (2) REPORT.—Each appropriate Federal bank-
21 ing agency shall transmit to the Congress not later
22 than December 1 of each year a report on the ac-
23 tions taken pursuant to this section.

24 (3) DEADLINE.—Each Federal agency required
25 to undertake a review described in subsection (a)

1 shall complete the review not later than December
2 31, 1990.

3 (d) DEFINITION.—As used in this section, the term
4 “appropriate Federal banking agency” means the Comp-
5 troller of the Currency, the Office of Thrift Supervision,
6 the Federal Deposit Insurance Corporation, and the
7 Board of Governors of the Federal Reserve System.

8 **SEC. 327. LEVERAGED BUYOUT AND GOING PRIVATE**
9 **TRANSACTIONS.**

10 Section 14 of the Securities Exchange Act of 1934
11 (15 U.S.C. 78n) is amended by adding at the end thereof
12 the following new subsection:

13 “(h)(1) It shall be unlawful for one or more officers,
14 directors, employees, or affiliates of an issuer of any secu-
15 rity which is registered pursuant to section 12 of this title,
16 or which would have been required to be so registered ex-
17 cept for the exemption contained in section 12(g)(2)(G)
18 of this title, or of any closed-end investment company reg-
19 istered under the Investment Company Act of 1940, to
20 acquire all or substantially all of the shares of a class of
21 such issuer’s or such company’s equity securities unless—

22 “(A) at least forty-five days have elapsed be-
23 tween the day on which the proposed acquisition is
24 publicly announced and the day on which the acqui-
25 sition occurs;

1 “(B) such issuer or company has obtained a re-
2 port by an independent appraiser, as provided in
3 paragraph (2), on the proposed acquisition; and

4 “(C) the report is made available to all share-
5 holders and all members of the board of directors of
6 the issuer in accordance with such rules as the Com-
7 mission may prescribe, but not later than twenty
8 days before the day on which the acquisition occurs.

9 “(2) For the purpose of paragraph (1)(B), any offi-
10 cers, directors, employees, or affiliates intending to pur-
11 chase all or substantially all of the shares of a class of
12 such issuer’s or such company’s equity securities shall ob-
13 tain an independent appraisal of such issuer from a na-
14 tionally accredited accounting firm which has no financial
15 interest in the outcome of such restructuring transaction
16 and whose fees for performing such appraisal are not re-
17 lated to the outcome of such restructuring transaction.
18 Any firm preparing an appraisal pursuant to this subpara-
19 graph shall be given access by the issuer to any and all
20 of the issuer’s books, records and premises.

21 “(3) For the purpose of this subsection, the term ‘af-
22 filiate’ means any person who becomes affiliated with one
23 or more of the officers, directors or employees of the issuer
24 in a transaction in which such officer, director or employee
25 will own, in the aggregate, directly or indirectly, within

1 3 years of such purchase of such equity security, 5 per
 2 centum or more of the equity of the surviving corporation
 3 or continuing business.”

4 **SEC. 328. FIRM FINANCING AND FINANCING DISCLOSURES.**

5 (a) FINANCING OF TAKEOVERS.—Section 14 of the
 6 Securities Exchange Act of 1934 (15 U.S.C. 78n), as
 7 amended by section 327, is amended by adding at the end
 8 thereof the following new subsection:

9 “(i)(1) It shall be unlawful for any person, directly
 10 or indirectly, by use of the mails or by any means or in-
 11 strumentality of interstate commerce or of any facility of
 12 a national securities exchange or otherwise, to make a ten-
 13 der offer for, or a request or invitation for tenders of, any
 14 equity security of a class described in subsection (d)(1)
 15 of this section unless 50 per centum or more of the consid-
 16 eration to be offered consists of cash. For purposes of the
 17 preceding sentence, 50 per centum or more of the consid-
 18 eration shall qualify as cash, if—

19 “(A) such cash is at the time of announcement
 20 of the tender offer on deposit in an account of the
 21 tendering person at a bank or trust company orga-
 22 nized under the laws of the United States, or the
 23 District of Columbia; or

24 “(B) the offering person has entered into a le-
 25 gally enforceable, unconditional, and irrevocable

1 commitment (not subject to execution of a further
2 definitive agreement) to provide such cash from such
3 bank or trust company, which commitment is not
4 contingent in any manner upon the success or fail-
5 ure of such tender offer or request or invitation for
6 tenders.

7 “(2) The provisions of paragraph (1) shall not apply
8 to a tender offer for, or a request or invitation for
9 tenders—

10 “(A) of equity securities of the tendering per-
11 son,

12 “(B) of equity securities of a class the total
13 value of which is less than \$100,000,000, or

14 “(C) in connection with borrowings or the in-
15 currence of debt or the issuance of bonds, notes, de-
16 bentures, participations, other debt securities, or
17 other obligations to pay money (or money’s worth in
18 one or more other forms) to provide for the purchase
19 of ‘qualifying employee security’ purchased or ac-
20 quired by an ‘employer stock ownership plan’ (as de-
21 fined in section 4975(e)(7) of the Internal Revenue
22 Code of 1986).

23 “(3) The Board of Governors of the Federal Reserve
24 System, in consultation with the Commission, shall pre-
25 scribe rules and regulations to effectuate the purpose of

1 this subsection. The Board of Governors is empowered to
2 grant exceptions to the provisions of this subsection by
3 order. In acting on an application for an exception, the
4 Board of Governors shall consider the positive economic
5 aspects of the transaction, the fairness of the transaction
6 to shareholders, debtholders, and creditors of both the ac-
7 quired and acquiring corporation, and the economic dis-
8 location, including unemployment risks, likely to be caused
9 by consummation of the transaction. The Board of Gov-
10 ernors shall respond affirmatively or negatively within 20
11 business days after receiving an application for an excep-
12 tion. Decisions of the Board of Governors denying such
13 exceptions shall not be reviewable in any court, nor shall
14 they be considered by any court by reason of any extraor-
15 dinary writ or remedy.

16 “(4)(A) Any person that violates or conspires to vio-
17 late paragraph (1) of this subsection shall be subject to
18 a civil penalty of not less than 5 per centum of the borrow-
19 ings such person has publicly represented it would need
20 to fund the entire proposed transaction.

21 “(B) On application by any person, any United
22 States district court may issue an injunction or other
23 order to prevent a violation of this subsection.”

24 (b) FINANCING DISCLOSURES.—Section 13(d)(1)(B)
25 of the Securities Exchange Act of 1934 (15 U.S.C.

1 78m(d)(1)(B)) is amended by striking out “security, a de-
2 scription of the transaction and the names of the parties
3 thereto, except that where a source of funds is a loan made
4 in the ordinary course of business by a bank, as defined
5 in section 3(a)(6) of this title, if the person filing such
6 statement so requests, the name of the bank shall not be
7 made available to the public” and inserting in lieu thereof
8 the following: “security—

9 “(i) a summary of each agreement or ar-
10 rangement relating to the extension of credit,
11 the issuance of securities for cash, or the other
12 acquisition of such funds, including the identity
13 of the parties, the term, the collateral, the stat-
14 ed and effective interest rates, all fees to be
15 paid in connection with the agreement or ar-
16 rangement to any person providing or arrang-
17 ing for the provision of such funds or other con-
18 sideration, and all other material terms or con-
19 ditions relative to such loan agreement or ar-
20 rangement; and

21 “(ii) any plans or arrangements to finance
22 or repay any amount of such funds representing
23 indebtedness incurred or to be incurred, or if no
24 such plans or arrangements have been made, a
25 statement to that effect.”

1 (c) ITEMIZED STATEMENT OF EXPENSES.—Section
 2 13(d)(1) of the Securities Exchange Act of 1934 (15
 3 U.S.C. 78m(d)(1)) is amended—

4 (1) by striking “and” at the end of subpara-
 5 graph (D);

6 (2) by striking the period at the end of sub-
 7 paragraph (E) and inserting “; and”; and

8 (3) by inserting after subparagraph (E) the fol-
 9 lowing:

10 “() a reasonably itemized statement of all
 11 expenses incurred or estimated to be incurred in
 12 connection with the acquisition of such beneficial
 13 ownership, including expenses for legal, accounting,
 14 financing, and investment banking services, filing
 15 fees, and all other similar fees and expenses, indicat-
 16 ing whether or not such person has paid or will be
 17 responsible for paying any or all such expenses.”

18 (d) DISCLOSURE OF EXPENSES.—Section
 19 14(d)() of the Securities Exchange Act of 1934 (15
 20 U.S.C. 78n(d)(8)) is amended by adding at the end the
 21 following: “Such rules and regulations shall require appro-
 22 priate disclosures by officers or directors of the issuer of
 23 all expenses incurred or estimated to be incurred in con-
 24 nection with the tender offer or request or invitation for
 25 tenders, including expenses for legal, accounting, financial,

1 and investment banking services, filing fees, and all other
 2 similar fees and expenses, indicating whether or not such
 3 person has paid or will be responsible for paying any or
 4 all such expenses.”

5 **SEC. 329. ROLE OF STATE LAW.**

6 The Securities Exchange Act of 1934 (15 U.S.C. 78a
 7 et seq.) is amended by adding at the end thereof the fol-
 8 lowing:

9 “ROLE OF STATE LAW

10 “SEC. 36. The Congress declares that the internal af-
 11 fairs or governance of corporations shall be subject to reg-
 12 ulation by the laws of the State under which such corpora-
 13 tion is organized. Nothing contained in section 13 or 14
 14 of this title or any rules or regulations thereunder shall
 15 be construed to invalidate, impair, or supersede any law
 16 enacted by any State regulating the internal affairs or
 17 governance or contests for control of any corporation orga-
 18 nized under its laws, except where compliance with such
 19 law would preclude compliance with the filing, disclosure,
 20 procedural, or antifraud requirements of sections 13 and
 21 14 of this title.”

1 **PART II—RESTRICTIONS ON HARMFUL**
2 **TAKEOVERS**

3 **SEC. 331. DISALLOWANCE OF DEDUCTION FOR MERGER**
4 **AND ACQUISITION EXPENSES.**

5 (a) DEDUCTION DISALLOWED.—Part IX of sub-
6 chapter B of chapter 1 of subtitle A (relating to items
7 not deductible) is amended by adding at the end the fol-
8 lowing new section:

9 **“SEC. 280I. DISALLOWANCE OF DEDUCTION FOR MERGER**
10 **AND ACQUISITION EXPENSES.**

11 “(a) IN GENERAL.—No deduction otherwise allow-
12 able under this chapter shall be allowed for any amount
13 paid or incurred in connection with an applicable acquisi-
14 tion.

15 “(b) APPLICABLE ACQUISITION.—For purposes of
16 this section—

17 “(1) IN GENERAL.—The term ‘applicable acqui-
18 sition’ means the acquisition by a person of owner-
19 ship interests in, or assets used in the active conduct
20 of a trade or business by, an entity if—

21 “(A) such acquisition occurs during the 3-
22 year period ending on the date the person ac-
23 quires control of the entity or the person ac-
24 quires more than one-half of the assets used in
25 the trade or business, and

1 “(B) there is a 15 percent or greater re-
 2 duction in employees of such entity or trade or
 3 business in connection with such acquisition.

4 “(2) EXCEPTIONS.—The term ‘applicable acqui-
 5 sition’ shall not include—

6 “(A) except as provided in paragraph (3),
 7 any acquisition by a person from an entity
 8 which it controls (or which controlled it) imme-
 9 diately before the acquisition, or

10 “(B) any acquisition described in clause
 11 (i), (ii), or (iii) of section 382(l)(3)(B).

12 “(3) RELATED TRANSACTIONS.—The term ‘ap-
 13 plicable acquisition’ shall include any acquisition
 14 after the acquisition described in paragraph (1)(A)
 15 if such acquisitions are part of a series of related
 16 transactions.

17 “(c) OTHER DEFINITIONS AND RULES.—For pur-
 18 poses of this section:

19 “(1) CONTROL.—A person shall be treated as
 20 in control of another entity if—

21 “(A) in the case of a corporation, it pos-
 22 sesses more than 50 per centum of the stock of
 23 the corporation (by vote or value), or

24 “(B) in the case of any other entity, it pos-
 25 sesses ownership interests representing more

1 than 50 per centum of the capital or profits in-
2 terest in the entity.

3 “(2) CONSTRUCTIVE OWNERSHIP RULES.—

4 “(A) IN GENERAL.—For purposes of para-
5 graph (1), the following rules shall apply:

6 “(i) in the case of a corporation, the
7 rules of section 267(c);

8 “(ii) in the case of a partnership, the
9 rules of section 707(b); and

10 “(iii) in the case of any other entity,
11 rules prescribed by the Secretary based on
12 the principles of the rules described in
13 clauses (i) and (ii).

14 “(B) OPTIONS.—Except as provided in
15 regulations, a person shall be treated as pos-
16 sessing stock or assets if the person has an op-
17 tion to acquire the stock or assets.

18 “(3) RELATED PARTIES.—All persons treated
19 as the employer under subsection (a) or (b) of sec-
20 tion 52 shall be treated as 1 person for purposes of
21 this section.”

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for such part IX is amended by adding after the item re-
24 lating to section 280H the following new item:

 “Sec. 280I. Disallowance of deduction for merger and acquisition
 expenses.”

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to amounts paid or incurred after
 3 December 31, 1996, for taxable years ending after such
 4 date.

5 **PART III—OTHER PROVISIONS**

6 **SEC. 341. \$1,000,000 COMPENSATION DEDUCTION LIMIT EX-** 7 **TENDED TO ALL EMPLOYERS OF ALL COR-** 8 **PORATIONS.**

9 (a) IN GENERAL.—Section 162(m) is amended—
 10 (1) by striking “publicly held corporation” in
 11 paragraph (1) and inserting “taxpayer (other than
 12 personal service corporations)”,
 13 (2) by striking “covered employee” each place it
 14 appears in paragraphs (1) and (4) and inserting
 15 “employee”, and
 16 (3) by striking paragraphs (2) and (3) and re-
 17 designating paragraph (4) as paragraph (2).

18 (b) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 1995, except that there shall not be taken
 21 into account with respect to any employee to whom section
 22 162(m) of the Internal Revenue Code of 1986 applies sole-
 23 ly by reason of such amendments remuneration payable
 24 under a written binding contract which was in effect on

1 October 25, 1995, and which was not modified thereafter
 2 in any material respect before such remuneration is paid.

3 **SEC. 342. LEVEL OF PARTICIPATION IN GUARANTEED**
 4 **LOANS UNDER EXPORT WORKING CAPITAL**
 5 **PROGRAM.**

6 Section 7(a)(2) of the Small Business Act (15 U.S.C.
 7 636(a)(2)) is amended by adding at the end the following
 8 new subparagraph:

9 “(D) PARTICIPATION UNDER EXPORT
 10 WORKING CAPITAL PROGRAM.—Notwithstanding
 11 subparagraph (A), in an agreement to partici-
 12 pate in a loan on a deferred basis under the
 13 Export Working Capital Program established
 14 pursuant to paragraph (14)(A), such partici-
 15 pation by the Administration shall be equal to the
 16 rate specified under this paragraph as in effect
 17 on the day before the date of the enactment of
 18 this subparagraph.”

19 **TITLE IV—MISCELLANEOUS**
 20 **PROVISIONS**

21 **SEC. 401. DEDUCTION FOR LOCAL SEWER AND WATER**
 22 **FEES.**

23 (a) IN GENERAL.—Subsection (b) of section 164 is
 24 amended by redesignating paragraphs (3) and (4) as para-

1 graphs (4) and (5), respectively, and by inserting after
2 paragraph (2) the following new paragraph:

3 “(3) DEDUCTION ALLOWED FOR LOCAL SEWER
4 AND WATER FEES.—

5 “(A) IN GENERAL.—To the extent that the
6 amount of local sewer and water fees paid or
7 accrued during any taxable year exceeds 1 per-
8 cent of adjusted gross income, such fees shall
9 be allowed as a deduction under subsection (a)
10 in the same manner as local real property taxes.

11 “(B) DEFINITION.—For purposes of sub-
12 paragraph (A), the term ‘local sewer and water
13 fees’ means any amount imposed by a local gov-
14 ernment, State government (or any agency or
15 instrumentality thereof), or by the District of
16 Columbia as a charge for sewer or water serv-
17 ice. Such term shall not include any amount al-
18 lowable as a deduction without regard to this
19 paragraph.”

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall apply to taxable years beginning after
22 December 31, 1995.

○